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ABSTRACT

The legal history of American colleges and universities is presented. The introductory synopsis contains summaries of the research activities, published results, historiographical assumptions, research procedures, and results and conclusions of the study. The actual summary report contains 14 sections that include discussions of the following topics: European background and colonial beginnings; the challenge to the government by church and state; academic government by ministers; college government and governance in the Eighteenth Century; toleration and the colleges; secularization; the decline of provincial colleges; governmental changes and curriculum innovations; the creation of state university systems; the legal status of university and college corporations; and public universities, independent colleges, and proprietary professional schools. (BD)

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FINAL REPORT

LEGAL HISTORY OF AMERICAN COLLEGES AND UNIVERSITIES

National Institute of Education Project No. 3 - 4054

Jurgen Herbst, Principal Investigator

University of Wisconsin - Madison

April 1977

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TABLE OF CONTENTS

A. Introductory Synopsis

1. Summary of Activities Carried Out and Results Published or in Print During the Period of the Grant

2. Historiographical Assumptions Current at Commencement of Research

3. Procedures Used in Carrying Out the Research

4. Summary of Results and Conclusions of Research

B. A Summary Report on the Legal and Governmental History of American Colleges

5. European Background and Colonial Beginnings

6. The Challenge to Government by Church and State: Harvard College, 1636-1707

7. Church and State in Virginia: The College of William and Mary

8. Academic Government by Ministers: Connecticut's Collegiate School, 1701-1745

9. An Eighteenth Century Crisis of College Government: Harvard in the 1720s

10. An Eighteenth Century Crisis of College Governance: William and Mary at Mid-Century

11. The Great Awakening, Toleration, and the Colleges: Yale, New Jersey, and King's

12. From Toleration to Secularization and Reaction: The Colleges in New York, Philadelphia, Connecticut, Rhode Island, and New Jersey

13. The Twilight of the Provincial College

14. Colleges under Pressure: Governmental Changes and Curricular Innovations

15. The American Revolution: The Creation of State University Systems

16. The Legal Status of University and College Corporations: Public or Private?

17. The Eclipse of Public Universities: Maryland and Virginia

18. Independent Colleges and Proprietary Professional Schools: Virginia and Maryland

A.

Introductory Synopsis: Research Activities, Published Results, Historiographical Assumptions, Procedures, and Conclusions

1. Summary of Activities Carried Out and Results Published or in Print During the Period of the Grant

The scholarly activities carried out with the support of the National Institute of Education during the period from June 1973 to the end of January 1977 are part of the principal investigator's on-going research on the institutional, legal, and governmental history of American colleges and universities. They were a continuation of studies carried out before 1973 on the background of academic governance and institutional development in medieval and Reformation Europe, and they lead into further research in the legal history of the institutions of higher learning in the United States. The period for which most of the research has been completed and to a large extent has already appeared in print or is being prepared for publication at this time (February 1977) covers the nearly two centuries from the founding of Harvard University in 1636 to the decision of the United States Supreme Court in the Dartmouth College case of 1819.

The following bibliography lists the result of the research now available in print and the journals or publications in which they may be found:

"The First Three American Colleges: Schools of the Reformation," Perspectives in American History, VIII (1974), 7-52.

"From Religion to Politics: Debates and Confrontations over American College Governance in the Mid-Eighteenth Century," Harvard Educational Review, XLVI (August, 1976), 397-424.

"The Charter for a Proposed College in Newport, Rhode Island: A Chapter in the History of Eighteenth Century Higher Education in America," Newport History, XLIX (Spring, 1976), 25-49.

"The Eighteenth Century Origins of the Split Between Private and Public Higher Education in the United States," History of Education Quarterly, XV (Fall, 1975), 273-280.

"The American Revolution and the American University," Perspectives in American History, X (1976), 279-354.

In addition, one essay will appear early in 1977 in a book to be published in England. It is scheduled to be printed as

"The Eighteenth-Century American Colonial College: Responses to Religious Pluralism" in James A. Leith, ed., Facets of Education in the Eighteenth Century, vol. 167 of Studies on Voltaire.

Tangentially related to the project on the legal history of American colleges are two review essays which were published during the period of the grant. They are,

"American College History: Re-Examination Underway," History of Education Quarterly, XIV (Summer, 1974), 259-266, and

"Towards a Historical Sociology of the University," Review of Education, I (November, 1975), 438-446.

2. Historiographical Assumptions Current at Commencement of Research

The historiography of the institutional and legal development of higher education in the American colonies and states at the outset of the research in the early 1970's was small and insignificant. It paled in comparison to the quantity of literature available on the social and intellectual history of the American colleges. More to the point, the writings on the history of legal and institutional problems of American colleges showed serious misconceptions. Frequently authors wrote from a partisan point of view to protest government by external boards of trustees and to promote, in the name of academic freedom a concept of faculty self-government which, supposedly, had governed other universities in the past. They fostered the false notion that academic government by boards of non-academics was an American invention, a notion found acceptable because it was taken as axiomatic that the ancestry of the American college had to be found in England and not on the European continent. Little distinction was made or understanding shown of the differences in law, structure, and governance between colleges and universities as they had emerged in Europe, and all too often these differences were ignored or brushed aside as being merely semantic. Little understanding, too, was shown for the European concept of the public realm as being the joint sphere and responsibility of secular and ecclesiastic authority, and of the college as an instrument of this joint authority to foster the commonweal through the education of future governors. In not acknowledging the continuing viability of the European concept of the unity of *regnum*, *sacerdotium*, and *studium* in the colonies as the unity of established state, church, and college, writers on college historiography have fostered the erroneous impression -- repeated *ad nauseam* in the textbooks -- that American colleges from their beginnings in 1636 had been private foundations analogous to the charitable bequests of English and continental colleges. Whatever was known of the legal and institutional development of American colleges had been derived from studies of individual institutions with few attempts at comparative analysis or detailed probing of European antecedents. A comprehensive view both developmentally and spatially was lacking. The general assumption was that institutional growth and legal approaches had been shaped primarily by the conditions peculiar to the American colonies and states.[1)]

The prevailing view of the American colonial colleges as private and primarily religious institutions has prevented also a correct understanding of their status as civil corporations. It has made it difficult to assess the roles of the Great Awakening and of religious heterogeneity of the population in strengthening

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[1)] For a critique of college historiography see "The First Three American Colleges: Schools of the Reformation," *Perspectives in American History*, VIII (1974), 45-52.

the importance of public oversight over the colleges during the eighteenth century. It has also made it difficult to appreciate the meaning of occasional rebellions against joint secular-ecclesiastic government, such as Increase Mather led in the 1690s at Harvard and Thomas Clap in the 1750s and 1760s at Yale. It has led earlier commentators to such perverse interpretations as celebrating Clap's argument for ministerial rule at Yale as an early instance of the defense of academic freedom. Similarly, the assumption of the legal status of American colonial colleges as eleemosynary corporations has prevented an appreciation of the emergence of the American independent college at the end of the eighteenth century in reaction to the early moves for state universities and state university systems during the Revolution. Finally, the prevailing view also has kept us from perceiving the extent to which in the decades before 1820 the question answered by Chief Justice Marshall in the Dartmouth College case had been discussed in the constitutional disputes concerning American colleges: Was the American college an eleemosynary corporation under the autonomous government of its trustees, or was it a civil corporation under the oversight of representatives of the public?

The historiographical significance of this question lies primarily in the fact that it had become a widely debated issue in the six decades before the Dartmouth case. Previous historical writings would not allow us to see that the moves towards secularization in college governance, prompted by the increasing denominational heterogeneity of the colonial population and by the plans for state-wide systems of republican collegiate education during the Revolution, brought about the appearance of independent, private, or denominationally sponsored colleges. These colleges sprang from the responses and reactions of local and frequently denominationally organized groups to the public institutions proposed for the new states. The decision defined in the Dartmouth case thus was to place the seal of final judicial approval on the private college as a legitimate competitor to its public rival.

3. Procedures Used in Carrying Out the Research

The results of this study are based on the standard methods of historical inquiry. The author has acquainted himself with the secondary literature of university history in Europe and North America from the middle ages to the present. He has paid particular attention to the developments in higher education beginning with the Reformation on the continent and in Tudor-Stuart England. His focus of concern has been on universities and colleges as legal entities and on their treatment in English and American treatises and commentaries on the law of corporations. In addition he has familiarized himself with the reports of cases in law involving colleges and universities in England and the United States. He then gathered and read a wide variety of American college histories ranging from the founding of Harvard to the creation of facilities for higher education today. He selected for special attention any books, monographs, chapters,essays, or documentary collections which dealt with legal issues, matters of governance, relations with governmental or ecclesiastical agencies, and instances of student unrest or rebellion. The key item to prompt detailed inquiry throughout the research has been the occurence of conflict between or among any of the following: Colonial or state governments, courts of law, board or boards of governance, faculty, students, and outsiders. Evidence of this conflict is contained most usually in press reports, remonstrances to governmental bodies, or letters to the newspapers.

The second stage of the research invovled a close study of original documents relating to these issues. In most cases the documents consisted of journals of legislative bodies, minutes of committee meetings and hearings, and files of correspondence. They included records of various courts of law and correspondence of judges, minutes and correspondence of governing boards and faculty bodies, papers and letters of individual trustees, professors, and students, and other college papers that proved to contain relevant material. In cases where these items could be identified through research guides copies were obtained through the mail. In other instances the author or his assistant travelled to state and college archives to conduct the research and the copying. The following archives have been visited during the duration of the grant:

Maryland Historical Society, Baltimore, Maryland
Circuit Court, Anne Arundel County, Maryland
Medical Sciences Library, Baltimore, Maryland
Hall of Records, Annapolis, Maryland
Maryland State Library, Annapolis, Maryland
Columbia University Library, New York
Yale University Archives, New Haven, Connecticut
Beinecke Library, New Haven, Connecticut
Massachusetts State Archives, Boston, Massachusetts
Massachusetts Historical Society, Boston, Massachusetts
Harvard University Archives, Cambridge, Massachusetts
Library of Harvard University Law School, Cambridge, Massachusetts
Widener Library, Harvard University, Cambridge, Massachusetts
Bowdoin College Archives, Brunswick, Maine

Middlebury College Archives, Middlebury, Vermont
University of Vermont Archives, Burlington, Vermont
Bailey Library, University of Vermont, Burlington, Vermont
Vermont State Archives, Montpelier, Vermont
Transylvania College Archives, Lexington, Kentucky
State Archives and Record Center, Frankfort, Kentucky
Centre College Library, Danville, Kentucky
University of North Carolina Library, Chapel Hill, North Carolina

In addition materials have gone into the preparation of this report that were obtained in archives during visits which were not supported by this grant. These materials came from the following depositories of documents:

Connecticut State Library, Hartford, Connecticut
Archives of the University of Pennsylvania, Philadelphia,Pennsylvania
Historical Society of Pennsylvania, Philadelphia, Pennsylvania
Princeton University Library, Princeton, New Jersey
Rutgers University Library, New Brunswick, New Jersey
State Archives, New Jersey, Trenton, New Jersey
Brown University Archives, Providence, Rhode Island
Swem Library, College of William and Mary, Williamsburg, Virginia
McCormick Library, Washington and Lee University, Lexington, Virginia
Eggleston Library, College of Hampden-Sydney, Hampden-Sydney,Virginia
Library of the University of Virginia, Charlottesville, Virginia

Whenever possible the author has collected on his visits or through the mail information on the number of degrees awarded in American colleges and universities before 1820. Much of the statistical and non-statistical information remains to be evaluated, and the results are to be published in the future. The cut-off date for material collected this far and published or ready for publication at this time (February 1977) is 1810. A first comprehensive book-length study is planned to deal with the legal and governmental history of the American college from 1636, the founding of Harvard College, to 1820, the year following the decision of the United States Supreme Court in the Dartmouth College Case.

4. Summary of Results and Conclusions of the Research

(5)[*] The early American colleges in New England (Harvard and Yale) and Virginia (William and Mary) owe their constitutional and legal traditions as well as their structures of governance to the European universities, colleges, and collegiate schools of the Reformation period, in particular to the academic institutions of Calvinist reformed Europe and the colleges of Oxford, Cambridge, Scotland, and Ireland. Unsure of their power or of the wisdom of chartering colleges on their own authority or, in the case of William and Mary, unable to bring together a corporation of masters, the colonists turned first to the models of a continental gymnasium illustre or an English grammar school. Insufficient resources of the towns or trade guilds and, in new England, a reluctance to ask the Crown for a charter of incorporation, led the colonists to found their collegiate schools as provincial -- not local -- institutions under the governance of external trustees. These schools were never autonomous corporations of self-governing scholars, but were supported, supervised, and in many ways directed by the combined authority of state and established church, Anglican in Virginia and congregational-presbyterian in New England.

(6) The constitutional history of Harvard College from 1636 to 1707 revolved around the efforts of a society of Protestant dissenters

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[*] The numbers in parentheses refer to the sections following in this report, of which the paragraphs in section 4 are summaries.

to adapt themselves and their college to the disappearance of the Reformation settlement of established civil and ecclesiastical authority jointly governing public affairs. The arrival of Anglicans, Baptists and Quakers in the Massachusetts Bay and the rise of liberal congregationalism in the Boston area coupled with an official British policy of religious toleration, eroded the basis on which congregational orthodoxy and the secular administration of the colony could be expected to sustain a joint government over the college. The creation of the corporation in 1650 set up a rival with powers to match or threaten that of the Overseers and invited a potential declaration of independence of the *studium* from the oversight of *regnum* and *sacerdotium*. Mather's proposal in 1692 to do away with the Overseers and to restrict the corporation to ministers was intended to bring the college under the exclucive oversight of the colony's established church. When Mather's proposal lost out, the colony had opted for college government which reflected the form, though no longer the substance, of the Reformation settlement. Dissent from orthodoxy and toleration of religious diversity had found a home at Harvard.

(7) In Virginia the College of William and Mary received a royal charter in 1693, and came into being under the guidance of James Blair, the Anglican commissary for the colony. The charter provided for another version of joint control by state and church over the corporation of the college masters. Even when in 1729 the period of trusteeship ended and the incorporated masters took

possession of the college, external secular supervision remained in the hands of the former trustees who now were to serve as visitors. That there was a college corporation of masters at all in existence was due primarily to the Anglican bishops in England who were suspicious that a school in the colonies under control by a lay board might quickly turn into a center of dissent. They thus preferred a college corporation of religiously orthodox masters. Blair, conscious of the political necessity for having lay support in Virginia, managed to assuage the bishops' fears by stressing that the lay visitors were joined by the Bishop of London as chancellor and by himself as president of the college. The College of William and Mary thus came to continue the pattern of external control over the college corporation by representatives of the joint authorities of state and church.

(8) Because Connecticut's colonists feared to attract Parliamentary attention to their province they refrained in 1701 from incorporating their college and from placing it under the oversight of magistrates and ministers. Instead they chartered the institution as the Collegiate School and put its direction in the hands of trustees, all of whom were ministers of the colony's congregational churches. These deviations from the Reformation pattern of college governance soon led to complications. Disputes and legal questions arose concerning the relationships between trustees and General Court and concerning the identity in law of the school's founders. Also at issue was the nature of the trusteeship as a partnership or a quasi-corporation. These questions were finally settled when in 1745 the trustees were incorporated by

the General Court as the President and Fellows of Yale College. Even then the corporation remained exclusively in the hands of ministers.

(9) At Harvard the 1720s brought unrest among the college tutors and involvement of the General Court in the government of the college. The process was set in motion by the attempt of a disgruntled alumnus to sue the corporation in inferior court and by the corporation's decision to limit the tutors to three-year terms. Arguing from English precedents the tutors claimed membership on the corporation, whereas the fellows, pointing to the tutors' young age and inexperience, rejected that claim. The conflict grew so disturbing that President Leverett for a time contemplated applying to the Crown for a new charter. While Leverett eventually thought better of the idea, the two houses of the General Court became embroiled and deadlocked over the dispute. The over-all effect of the commotion was to preserve the Reformation type of governance at Harvard while nonetheless initiating a shift in the balance of power from the ministers to the magistrates.

(10) At William and Mary a series of events similar to Harvard's tutor rebellion unfolded after the middle of the century in the battle of the college corporation of masters with the representatives of the Virginia gentry on the board of visitors. As in Massachusetts so in Virginia, the college teachers were no match for the provincial secular leaders. The crisis over the Two Penny

Act of 1755 already showed that not even a successful appeal to the Crown could bring relief to the masters in Virginia. The dispute at the college came to center on the masters' contention that the visitors were violating the college charter. It led to the masters's fruitless attempts to press for charter revision in London. Their complaints were never satisfactorily heard or adjudicated, and the college remained under the effective control of the Virginia board of visitors.

(11) The Great Awakening brought the most severe challenge to the Reformation type of joint clerical-secular college government. The attacks by itinerant preachers on the established order and the British policy of toleration provoked the first confrontation at Yale. At first President Clap sought to rely on the General Court for support against the Awakeners, but he soon changed course and began to dissociate the college from both established church and state and to turn it into an independent seminary. In New Jersey the provinical college stressed its interdenominational and intercolonial character from the very beginning, and did so with the backing of the provincial legislature. In New York the key question came to be whether King's College should be governed under a policy of toleration with preferment for the officially established Anglicans, or whether the legislature should intervene and see to it that toleration be granted even-handedly to all denominations.

(12) As the Great Awakening receded the struggles over college government began to be expressed in political rather than denominational terms. In New York Livingston's most radically secular college charter

left no room for any denominational representation and remained a blueprint. Only in Philadelphia did an actual college come about with a minimum of ecclesiastical influence on its governance. In Connecticut the struggle for secularization reached its most traumatic confrontations and disturbances in the closing years of Clap's presidency. In Rhode Island a reverse movement towards reliance on denominational interests without governmental participation manifested itself. It led to an early but unsuccessful attempt of creating a second college as an alternative to the provinical college at Providence. In New Jersey, on the other hand, the efforts of the Dutch Reformed to found a college of their own led to the first appearance of a non-provincial college as a rival to the College of New Jersey. In all of these cases a growing polarization between legislature and the denominations and a dissolution of the earlier state-church connection became evident.

(13) The sixties and seventies brought the demise of the provincial college. Two more institutions of this type were chartered, one in Rhode Island and one in New Hampshire. Yet in New Jersey, Rhode Island, and Massachusetts the provincial college monopoly was challenged by competitors, though only Queen's College in New Jersey won its battle. In three other states -- New Hampshire, Georgia, and North Carolina -- Anglican officials representing the Crown managed to prevent the establishment of provincial colleges, and in South Carolina the Stamp Act crisis produced the same result. As the Revolution approached anti-Anglican feeling led to more

or less violent overthrows of college government at the Anglican-dominated provincial colleges in Virginia, Pennsylvania, and New York. The age of the provincial college had come to a close.

(14) At Harvard an increase in the influence of Overseers and non-resident corporation members had begun in the 1720s without leading to serious conflict or disruption. After Clap's departure from Yale corporation pressure led to the resignation of the tutors and an increasing alienation of the clerical corporation from the students and the legislature. This situation improved with the installation of Ezra Stiles to the presidency. At many colleges curricular changes began with the appearance of student literary societies and the establishment of professorial chairs in medicine, law, and other fields. At William and Mary curricular change came in 1779 after a prolonged period of student and popular dissatisfaction with the masters. At Yale Stiles acknowledged the reforms accomplished under Daggett and the tutors, and vigorously promoted professional studies as the best way in which the college could discharge its civic duties to the commonwealth.

(15) The Revolution was responsible not only for curricular innovation, confirmation or take-over of the provincial colleges by state legislatures, and interruption of the day-to-day collegiate routines through hostilities, but also for the development of ambitious projects for state-wide university systems. In Maryland a state university was created based on the model of Myles Cooper's abortive project in New York. In New York a state system of preparatory and

collegiate education was combined with semi-autonomous college corporations under the supervision of the board of regents. A similar system was designed in Georgia, but those planned for Pennsylvania and for Vermont did not thrive before 1800.

(16) The institutional changes and the constitutional debates of the revolutionary period raised questions whether colleges and universities were civil corporations chartered to govern themselves in the manner of political bodies, or whether they were eleemosyrary corporations created to administer charities for the education of young men. If they were the former, the legislatures could abolish or alter their charters at will; if they were the latter, their charters would protect them from legislative interference. At Yale the issue was defused in 1792 when civil officials were added to the corporation. In Philadelphia the college tuustees were first expropriated and ten years later restored. Only in Virginia did they issue come to a court of law. The court, however, refused to address itself to the question and left the issue unresolved.

(17) Despite the resurgence of interest in public institutions during the Revolution, public universities did not enjoy strong popular support in the next few decades. In Maryland the initial legislative support for the two collegs of the state university began to evaporate by 1785. Instead the grammar schools and academies in the counties became beneficiaries of assembly aid. In 1806 the grants to the two colleges were cut off altogether and

the university was disbanded. In Virginia presbyterian opposition was chiefly responsible for the failure of attempts to convert the College of William and Mary into a state university. As a substitute Jefferson came to realize his plan for a state university with the transformation of Albemarle Academy into Central College in 1816 and of Central College into the University of Virginia in 1819. The final step came only in 1825 when the university opened its doors. The emergence of sectional interests may be seen as the chief cause for the eclipse of public colleges and universities.

(18) Between 1780 and 1820 the independent or private American college made its appearance in several states. Denominationally sponsored or locally promoted academies and colleges as well as proprietary and church-related professional schools began to compete for public funds with state colleges or universities. In Virginia Hampden-Sydney and Liberty Hall were presbyterian academies that developed into colleges. At Liberty Hall a constitutional battle had to be fought before the legislature would accept the college as an eleemosynary corporation under trustee government and give up the claim that it was a civil corporation under public oversight. In Maryland seven new institutions showed the variety of non-pulbic schools. Two were founded by Methodists, two by Catholics, one by a civic association, and two by professional proprietors. Out of the College of Medicine then grew the second University of Maryland. Despite its name, the university was a private corporation of professionals associated around the pre-existing corporation of the College of Medicine. Vir-

ginia and Maryland showed that the predominance of colleges and universities as public institutions had come to an end.

Conclusions: American colleges and universities derive their traditions of governance form the preparatory and collegiate institutions of Reformation Europe. The arrival of denominationally diverse settlers and the Great Awakening caused college governance in the colonies to diverge from the European pattern of joint secular-ecclesiastic supervision. With the added impetus of the Revolution the provincial colleges of the colonial period turned into state colleges and were supplemented by state universities and state university systems. This development, in turn, prompted local and denominational as well as professional groups to create academic institutions of their own, independent from public sponsorship, support, or direction. Thus the two-pronged tradition of public and private institutions of the higher learning had been established by the end of the eighteenth century. The Dartmouth Case of 1819 then gave legal endoresement to the private American college as a legitimate rival of the public college or university.

B.

A Summary Report on the Legal and Governmental History of American Colleges

5. European Background and Colonial Beginnings [*)]

The first three colleges founded in the English-speaking colonies in North America -- Harvard, William and Mary, and Yale -- have one feature of their early existence in common: they did not begin their careers as incorporated colleges or universities as such institutions were then known in Europe. Rather, they were created as unincorporated provincial Latin grammar boarding schools governed by trustees, and as such they are more closely related in conception and in governmental practice to the contemporary academic institutions of Reformed Europe -- *gymnasia illustria*, academies, or *Gelehrtenschulen* on the Continent and the independent grammar schools of Elizabethan England or the dissenting academies after 1662 -- than to the medieval universities. If one is to understand the origins and early development of American higher education this fact must first of all be understood, though it runs counter to much of what has been written on the subject.

Harvard, William and Mary, and Yale were establishments of the Protestant Reformation. The schools, colleges, and universities of Protestant Europe had themselves been founded under conditions of officially sanctioned or prescribed religious homogeneity and could thus serve as examples for

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[*)] The material in this section has been published in expanded form as "The First Three American Colleges: Schools of the Reformation," *Perspectives in American History*, VIII (1974), 7 - 52. The reader should consult that essay for sources and documentation.

the inhabitants of seventeenth century New England and Virginia in which a similar religious homogeneity prevailed. And in their foundings the first three colleges illustrate the lack of clear and inflexible lines of demarcation between schools and colleges on the one hand, and colleges and universities on the other. Harvard is first mentioned in the records of the General Court of the Massachusetts Bay Colony in 1636 as "a school or college"to which the Court agreed it would give ₤ 400. But it was not until fourteen years later that the school was formally chartered as a college. In Virginia the College of William and Mary carried on its operations for the first thirty-six years as a grammar school and an English petty school for Indian boys and neighborhood children. It was not until 1729 that the college corporation of president and six masters took over the college property. At Yale formal incorporation of the collegiate school had to wait from 1701 to 1745. Only then did Yale College come into legal existence as a formally incorporated body politic. All Protestant reformers were concerned with learning and schooling as aids to faith, and institutional arrangements and legal nomenclature were matters of convenience and accomodation to circumstance.

During the first five years of its nominal existence Harvard, the first institution of higher learning to be founded in the original thirteen English speaking colonies on the North American continent, was placed under the care of a government committee. In November 1637, one year after the General Court of the Massachusetts Bay Colony had first agreed "to give 400 lbs. towards a school or college," the Court appointed the governor, deputy governor, and the treasurer of the colony together with three additional magistrates and six ministers as inspectors, governors, or trustees of this new school. The committee assumed the oversight over the institution's affairs and appointed Nathaniel Eaton as its first professor, only to lose him again in 1639 when the General Court dismissed him for "cruel and barbarous beatings...and for other neglecting and misusing of his scholars..." The committee of inspectors apparently did not take an active part in the next chapter of the story when assorted members of the General Court took the initiative in appointing Henry Dunster as president in 1640. The General Court as the colony's highest legislative and judicial forum kept tight reins on the college's affairs and did not always delegate its authority to its committee. But in 1642, four days after Dunster's first commencement, it reconstituted the inspectors as a permanent board of overseers, now consisting of governor, deptuy-governor and college president, all nine assistants of the Court and the nine pastors and teachers of the six adjoining towns. These twenty-one men were to administer the college funds and property, were obliged to hear appeals concerning rules and decisions affecting the college, and were themselves held accountable to the General Court which served as the general supervisory agency for all such public trusts. At the same time the new Board of Overseers had received and took on the characteristics of a quasi-corporation, that is, of a body which, while lacking formal incorporation, showed the governmental powers and other attributes of corporate status. It was self-perpetuating; it made laws and statutes for the college by majority vote; it promulgated a set of "Laws, Liberties, and Orders," and it ordered the casting of a college seal. It obviously exercised far greater authority than had ever been allowed to its predecessor, the government committee of inspectors

In Virginia James Blair, the commissary of the Anglican Church and representative of the Bishop of London, took the initiative and moved toward the establishment of a grammar school and a college for the training of a native Episcopalean ministry. To accomplish this he succeeded in 1693 in obtaining a royal charter which established an unincorporated board of eighteen Virginia gentlemen as trustees over the new institution and its property, he himself among them as president of the school. The same eighteen gentlemen and their successors were also to serve as governors and visitors of the college to be established. But it took another thirty-six years until the full corporated body of the college consisting of a president and six masters could be assembled. In the meantime a grammar school opened in 1694 under the trusteeship, and an Indian school began its operations in 1711. In 1729 finally the two surviving trustees could hand over the property to the college corporation, and the initial stage in the existence of the College of William and Mary had come to an end. During both the period of trusteeship and college corporation the charter provided for a royal cash grant out of the Virginia quitrents, for a portion of the tobacco revenue, for the patronage and income of the office of surveyor-general, and for twenty-thousand acres of land. Funded with royal gifts, the College of William and Mary survived its infancy under the benevolent oversight of its trustees before it emerged as a fully incorporated collegiate body.

In Connecticut, finally, the General Court's authorization of 1701 granted "full liberty, right, and privilege" to a number of ministers and their successors "to stand as trustees, partners, or undertakers" for a collegiate school. They were to erect it and to improve and encourage it in the future. It was assumed in this document of 1701 that such a school for instructing youth in the Arts and Sciences and for fitting them for public employment in church and state had already been funded and endowed. The trustees, for such is the implication, were to take charge of this project, and the charter was to provide but the proper legal framework within which the school could grow and thrive. As an added encouragement the document committed the Assembly to an annual contribution of ₤ 120 "until this Court order otherwise", and empowered the trustees to accept other funds already bequeathed or expected to be received from private persons in the future. As at Harvard and at William and Mary earlier, the legal form provided for the school was the trust. As trust Yale lived through its first forty-four years until in 1745 the Connecticut Assembly saw fit to incorporate it as a college.

For an understanding of the alternatives that were open to the colonists in choosing the type of institution for the higher education of their sons we must turn to Europe. We should keep in mind that the European universities known to them were not the medieval autonomous corporations of masters and scholars, but the territorial and confessional universities of the Reformation, funded and supported by the united authority of church and state. This unified authority of the two public realms of regnum and sacerdotium had been expressed in the Reformation settlement at the peace of Augsburg in 1555. The formula cuius regio, eius religio -- the prince determines the religion of his subjects -- had brought some sort of order and a modus vivendi into the ecclesiastical arrangements of Europe's principalities and kingdoms. The preference of the territorial ruler decided state religion and established church with the prince as its head and protector. The one universal church of the Middle Ages made way for territorially established churches, each under the direction of the secular power in its realm. In Europe territorial princes assumed many of the secular and ecclesiastical powers previously held by Emperor and Pope. In New England the Puritans assumed that under the general oversight of the General Court, Harvard College would strengthen the future civil and ecclesiastical servants of the Bay Colony in the confession and practice of their Calvinist faith. In Virginia the College of William and Mary was to be an Anglican college and seminary under the oversight of a local lay board of visitors and of the Bishop of London as its chancellor. In each province the joint principles of territorial rule and established faith were assumed by their respective leaders. By comparison to medieval tradition, these assumptions carried within them the seeds of dissension and splintering for the religious community and the beginning of secular dominance over the church.

The Reformation universities also had broken with the medieval conception of the university as an autonomous guild or corporation of masters or scholars. The medieval universities had not been founded by local dignitaries, but by their teachers or students. The Parisian masters had relied on the powers of Papacy and Empire to defend them against bishop, king, and city government. They had associated with each other in a guild for protection against secular and ecclesiastical authorities in Paris, and they had become a legally recognized corporation when their unwritten customs had been reduced to written statutes and they had begun to elect officers of their own. With a papal grant of the rights to sue and be sued as a corporation and to use a common seal they were recognized by both Pope and King as a distinct class of persons in comparison with the monks and canons of the Church and with the townsmen of Paris. Given this corporate autonomy, the masters of Paris saw their university, as Thomas Aquinas wrote in 1255, as a collegium scholasticum. Even when they looked for protection and support to Pope and Emperor, they strove to preserve and to strengthen their independence from both. They neither wanted to be a collegium ecclesiasticum, an ecclesiastical corporation, nor a collegium secularium, a lay or secular corporation.

It was in the German countries where Luther's revolt against the Church of Rome had signalled the climax of the Reformation. There we can observe best the secularization of control over the universities by external authorities. Here the reformers pointed to the mounting complaints about the lack of discipline among students and about the professors'neglect of their disciplinary and their teaching duties. They demanded change, and expected it to be initiated by the secular authorities. The histories of the universities at Leipzig, Heidelberg, and Ingolstadt between 1480 and 1530, wrote Hartfelder, were a constant struggle between the territorial rulers and the academic corporations. Hartfelder, at least, seemed to think that in this struggle the corporations not only were bound to lose, but also deserved to lose because they had resigned themselves to selfsatisfied indolence. D'Irsay struck a less sanguine note. He remarked that there were benefits, too, for the universities. They received from their princes confiscated church properties, the libraries of monasteries, and entire hospitals.

> But at what a price! [he continued] The loss of autonomy, the loss of professorial dignity. Professors were supervised in the exercise of their duties; they suffered bureaucratic annoyances on pain of having their salaries decreased or withheld altogether. In 1548 the faculties [in Saxony] had to submit to prior and yet more oppressive censorship. In 1550 a profession of faith was required -- the acceptance of Lutheranism was made mandatory for a professor -- and a new authority, that of the State Church, the Superior Consistory, watched over the integrity of the Augustine confession. Certain members of the university, worn down, like Amerbach, a professor of physics, returned to Catholicism and left Wittenberg for Ingolstadt. The majority remained close to the "foundations of pure faith", (as Luther said), contemplating the will of God.

Luther himself joined the chorus of the complainants, castigated the universities for their neglect of Scriptures and faith and for their preference of Aristotle over Christ. He attributed the degeneration of the studia to their independence and their taking refuge behind imperial laws and papal privileges. He expressed a desire to see territorial law and custom take precedence over ancient tradition, and to have local authorities regulate admission to the universities. "A prince or city council ought to supervise admissions, and permit only the well qualified to be sent," he wrote in 1520.

While existing universities bore the brunt of the reforms, new academic institutions were called into being by the intense desire of territorial princes to assure the training of youth in the Reformed faith and to provide for themselves a well-educated core of civil servants. With Papacy and Empire virtually ignored, localism and provincialism asserted themselves in the governing and financing of the new Protestant universities of Marburg (1527), Königsberg (1544), Jena (1558), and Helmstädt (1576). At Marburg, for example, fellowships were given to students on the condition that after graduation they would enter the civil service of Hesse. Here and elsewhere the universities' funds came from the territorial treasuries and from income of properties belonging to territorial churches. In many instances the universities and their members were exempted from provincial taxes and custom duties, and frequently they received the right to engage in a profitable trade. How similar these arrangements were to those adopted a century later in Massachusetts where town rates and tax privileges as well as the income of the Charles River ferry were utilized for the financial support of Harvard College! The announced purpose for the founding of these universities also bore striking similarity to statements later made in the American colleges. The Marburg statutes of 1529 speak of training men"Partim ecclesiae Christianae, partim Reipublicae praeficiendi," and the Yale Charter of 1701, as if to translate the phrase, promises to fit youths "for public employment both in Church and Civil State." In the German universities of the 16th century the reforming spirit found expression also in the emphasis of the humanists on language, style, and behavior of the gentleman and future leader, and on the pedagogical purpose of raising good citizens and responsible magistrates. Reform here meant a broad attack on the automy of academic corporations by demanding the subordination of academic affairs to the needs of the territorial-confessional state for trained administrators, ministers, and teachers.

In England secularization proceeded at a slower pace than in the German universities. It can be traced most easily in the legal enactments of the Tudor monarchs, and it was least in evidence in the academic life of the colleges. The territorial principle of the assertion of royal dominance over the universities at Oxford and Cambridge found legislative expression first in 1533 with the Act for Restraint of Appeals (24 Henry VIII, c. 12). This act replaced the joint authority of Pope and Crown over the two universities with that of the Crown alone. The next year the Act for the Submission for the Clergy (25 Henry VIII, c. 19) and the Act of Visitation (25 Henry VIII, c. 21) directed that appeals from ecclesiastical courts were to go to the Court of Chancery, and that the rights of visitation of the universities were to be transferred from the Papacy to the Crown. In 1536 all degree candidates had to acknowledge the royal supremacy; two years later convents and monastic houses were closed; and in 1540 and 1546, respectively, Cambridge and Oxford each received five Regius professorships for theology, medicine, civil law, Greek, and Hebrew. A potentially disastrous enactment came in 1545 when the Crown became legal owner of college property and was empowered to dissolve colleges and chantries at will (37 Henry VIII, c. 4). Fortunately for the colleges, the new ruler Edward VI exempted from this act the colleges and universities (1 Edward VI, c. 14). Henry VIII, Edward VI, Mary and Elizabeth all sent visitors to the universities to inspect their affairs and issue new statues. In 1559 Elizabeth required new allegiance to the Acts of Supremacy and Uniformity and in 1571 she founded anew the universities by incorporating them in the name of their chancellors, masters, and students (13 Eliz., c.29). This act of incorporation, wrote Curtis,

> acknowledged no past or present authority over the universities than that of the Crown, and of course by implication of the Crown and Parliament. For all intents and purposes Oxford and Cambridge had bestowed upon them and had assumed the character of royal institutions of a sort significantly different from those brought under royal control only by the Acts asserting the supremacy of the Crown in ecclesiastical affairs.

The secularization was strengthened even further in 1604 when James I granted each of the two universities the right to be represented in the House of Commons, a right no ecclesiastical institution had ever received. Thus by the end of the 16th century Oxford and Cambridge, the two universities of England, had in their own fashion been transferred into territorial institutions under the ultimate control of a Protestant sovereign.

Paradoxically, royal dominance over the universities helped preserve the ecclesiastical character of life in the colleges. Queen Elizabeth as head and protector of the Church of England had a stake in the uninterrupted flow of trained clergymen from the colleges into the parishes and ecclesiastical bureaucracy of England, and she encouraged the creation of colleges for students of theology. Under Elizabeth's successor, James I, the exclusive emphasis on the support of collegiate foundations for theological studies disappeared. This gradual shift in the nature of English colleges from purely ecclesiastical foundations to those with an increasingly larger admixture of secular elements was then reflected in several seventeenth and eighteenth century commentaries on college issues. Bishop Stillingfleet, no apologist for secular authorities, hesitated in 1694 to call the colleges ecclesiastical corporations, but held them to be "generally esteemed as parts of the ecclesiastical body." This was, he pointed out, because fellows had clerical status, college statutes and customs were based on ecclesiastical law and usage, and chancellors wielded ecclesiastical jurisdiction over the members of the universities -- a jurisdiction which was a part of ecclesiastical law. Writing in 1714, John Ayliffe, tutor at Oxford, conceded that in the view of the canon law -- but neither of the civil nor of the common law -- colleges were spiritual or ecclesiastical corporations "if the number of clerics be equal to or greater than that of the laics." Both the civil and the canon law, however, acknowledged that members in their colleges studied law and physics as well as divinity, and that therefore the universities were understood "to be (at least) bodies of a mixed nature, if not entirely ecclesiastical, consisting partly of ecclesiastics and partly of laics."

Ayliffe was seconded in that view by Thomas Wood in 1720 who defined colleges and hospitals as mixed corporations consisting of both spiritual and temporal persons. Yet the ecclesiastical appearance, if not the legal status, of the English colleges persisted. In large part this was due to their ancient traditions and their relative independence from the universities. The visitations ordered by the Tudor monarchs had done little to change this. As Curtis describes and explains it:

> The religious character of most of the colleges within the two universities had persisted unchanged. For the most part the Tudor visitors left the statutes of the colleges intact and the founders of new colleges acted most conventionally in drafting regulations for their societies. As a result most of the visitors of the several colleges were still great ecclesiastics, the heads of colleges were men in orders, and most of the fellows either were in orders or had to take orders within a specified length of time after their election or after they had incepted M.A. These circumstances, especially as the importance of the colleges grew and the powers and influence of the heads and fellows became magnified, meant that the control of university affairs continued in the hands of clergymen.

There was left, Curtis concludes, "a strong impression that the universities were still ecclesiastical institutions." Appearances and actual legal realities were in conflict and this ambiguous state of affairs persisted throughout the eighteenth century.

Besides citing the canon and the civil law and referring to "general esteem" Bishop Stillingfleet relied on ancient privilege in his presentation in 1694 before the House of Lords. Here the bishop spoke out against the judgment given by the Court of Kings Bench in Philips v. Bury (1 Ld. Raym. 5, 1693). The Court had set aside the judgment of the Bishop of Exeter, acting as the visitor of Exeter College, in depriving Dr. Bury, the college rector, of his office. Stillingfleet maintained that the universities' privileges, their independence of Church and Crown, would not allow the interference of a royal court with academic jurisdiction, even though the universities were considered to be lay corporations. He also disputed the assumption that the chancery courts could hear appeals from the bishop's judgment when the bishop acted as the college visitor, not as an ecclesiastical official. Stillingfleet based his case on privileges received by the universities from Crown and Parliament. These privileges guaranteed to the universities "that the final decisions of all causes arising among themselves were to be determined in their own body" and by their statutes only. No appeal would lie to the Court of Kings Bench or to the chancery courts unless in cases concerning murder, felonies, and freehold. This claim for independent jurisdiction, Stillingfleet maintained, went back to the early days of the European universities. It rested on the privileges granted to the students at Bologna by Emperor Frederick I in the Authentica Habita of 1158 and on the medieval conception of the trinity of regnum, sacerdotium, and studium, each autonomous in its own sphere and all three committed to the defense of faith.

Bishop Stillingfleet's case for the autonomous jurisdiction of colleges under their visitor eventually came to be established more firmly on the grounds of the common law of corporations than on the ground of medieval privileges of masters and scholars supported by canon or civil law. The classic presentation of the common law case was that of Chief Justice Lord Holt in his dissent to Philips vs. Bury. Holt held that colleges were

> private and particular corporations for charity, founded and endowed by private persons, . . . subject to the private government of those who erect them; and, therefore [he concluded] if there be no visitor appointed by the founder, the law appoints the founder and his heirs to be visitors who ought to proceed and act according to the particular laws and constitutions assigned them by the founder.

The visitor's chief task was to see to it that the charity bestowed on the college not be perverted, and that differences of opinion among the incorporated recipients of the charity be settled. This the visitor was to do by judging each dispute "according to the statues and rules of the college. He may expel, and . . . he may deprive." These powers lay within his jurisdiction, and from it there was no appeal: "It is plain by all the authorities of our books, and by the way of pleading, that the cause of the visitor's sentence is not examinable." A century later Lord Chancellor Camden is reported to have said of the jurisdiction of a visitor that it was, indeed, peculiar. "It is a despotism uncontrolled, and without appeal;" he said, "the only one of the kind which is known in this kingdom." It was thus the common law of England which reestablished anew a claim to autonomous, even despotic, college jurisdiction under a visitor. This autonomy, however, was no longer derived from academic custom or based on academic privilege, but rested on the common law of charitable corporations. It was thus a right to be enjoyed by colleges under the law of England, not an attribute of the medieval studium recognized and enforcable throughout the western world. Its application was territorial, not universal.

In the common law courts, then, the English colleges and universities had come to be viewed as lay, rather than ecclesiastical, corporations already by the middle of the seventeenth century. However gradual the process the English universities and colleges did not escape the secularizing trend spurred on by the Reformation. Ancient privileges transmuted into common law precedent survived in the colleges, and royal influence over the two universities of the realm testified to the applicability of the principle of territorial-confessional control in England as much as on the continent.

Territorial universities governed by external boards of control also had come into existence in the Netherlands. Morison reports that the Massachusetts Puritans were familiar with the academic institutions at Leyden and Franeker. These universities did not resemble autonomous academic corporations, but instead exhibited the Reformation pattern of control by state or city authorities. Collegiate foundations in Ireland and Scotland followed models of governance that ranged from those of the Oxford and Cambridge colleges to those of universities under external control. The distinctions in governmental structure between Dublin's Trinity College and the academic institutions of Scotland in Edinburgh and Aberdeen corresponded to the difference between Anglican and Calvinist views of academic governance, the former adopting autonomous corporations, the latter external boards. This difference was to become manifest again in the New World in the discussions surrounding the charter of the College of William and Mary.

College government in the colonies derived its traditions not only from Europe's universities and colleges, but also from the academic gymnasia or gymnasia illustria of the continent and from the endowed grammar schools of England. These schools present us with the clearest examples of control over an academic institution by external boards. Everywhere in the Protestant countries and cities on the European continent secular authorities, whether Reformed or Lutheran, had become intensely concerned with the education of their youth, and had taken the initiative in creating and funding institutions for instruction in Latin, the liberal arts, and the professions. In doing this they developed a novel system of academic government. It consisted of two boards, one representing an external sponsor or founder of the institution, the other consisting of an assembly of senior teachers charged with the internal administration of the school, yet subject to the ultimate authority of the external board. Similar to the governance at the universities in Leyden and Edinburgh, the two board system also worked in Strassburg and Geneva. In Lutheran countries the external supervisory function was carried out by agencies variously called the curatores and reformatores or by commissions and consistories of the state's secular or ecclesiastical administrative departments. Knowing of the prevalence of these two-board arrangements in Europe, we shall not be too surprised when we eventually detect, as at Harvard and William and Mary, close approximations to this type of academic governance in the American colonies.

The _gymnasia_ _illustria_ on the continent differed from the universities principally in their lack of papal or royal charter and their resulting inability to offer academic degrees that carried a claim to the bearer's right to teach at academic institutions elsewhere. This limitation, however, was more apparent than real because the Reformation, having brought the universities under territorial control, had already raised questions concerning the universal recognition of a scholar's right to teach at a _studium_ everywhere in Christendom. Thus in the sixteenth and seventeenth centuries it made little difference whether the academic institution held university rank or was but a _gymnasium_ _illustre_. In many cases there was little distinction in the curricular offerings, and many of the _gymnasia_ had all the earmarks of established universities, such as teachers in one or more of the four faculties, libraries, fellowships, a seal, semi-annual timetables of lectures, registers of matriculation, and a rector elected at regular intervals. For a city or territory such academic _gymnasia_ offered several advantages. They provided a means of academic training for civil and ecclesiastical servants at a cost far less than would be required for the establishement and funding of a university. For its professors such schools could draw on local teachers, pastors, lawyers, and physicians. To its students it could offer a home-town training comparable or close to that given by the universities. Given these circumstances it is not difficult to understand the preference shown on the continent for this type of academic institution.

The continental schools at Strassburg and Geneva were governed under the two-board system. There were, however, schools where the government was exercised by one external board of non-teaching governors and where an internal board of faculty members was missing. The English grammar schools of the sixteenth century fall into this category. Their instruction was limited to what was offered at Geneva in the schola privata, and it excluded divinity, medicine, Greek, Hebrew and philosophy, subjects taught in Geneva in the schola publica. In England, the latter subjects were reserved to the colleges in the universities. Consequently the teaching staff of the grammar schools was smaller and could not claim to constitute an internal governing board. In many instances this type of governance placed increased responsibility and power in the hands of the school's principal while, at the same time, it made this official highly dependent on the school's board. When the headmaster was a forceful personality, he could assert his claim to the co-government of the school; when he was weak, the school was governed by outsiders. The position of such principal or headmaster thus foreshadowed the place eventually taken by a college president in the American colonies. In no case, however, did the one-board system give legal recognition to the faculty's role in the effective government of the school. Ultimate and full responsibility lay with the governors or trustees of the board.

An example of such a school was St. Paul's Grammar School in London, founded by the humanist reformer John Colet in 1509, and placed by him under the control of the Company of Mercers, a London trades guild. In 1561 another London trade guild, the Company of Merchant Taylors, decided to found a school. But the continental pattern of municipal foundations also could be found in England. In 1552 the bailiffs, burgesses, and inhabitants of Shrewsbury were authorized by Edward VI to receive a chartered grammar school. Not all new schools, however, were founded as colleges or placed under the supervision of already existing trade or municipal corporations. There could be new foundations as was the case with the grammar school at Christ's Hospital, the latter being an almshouse requested from the Crown by the City of London. Both school and almshouse were initially placed under the government of the Corporation of London by Edward VI in 1553 and soon thereafter under a separate corporation of their own. Harrow, too, was a new foundation. Endowed by John Lyon of Preston, incorporated in 1571 by Queen Elizabeth in the name of six "keepers and governors of the Free Grammar School of John Lyon in the Village of Harrow-on-the-Hill," the school got under way in the 1590's. Similarly, Elizabeth's successor, James I, granted a charter to Thomas Sutton in 1609 for an almshouse and a free grammar school. In 1611 this foundation moved into an old Carthusian monastery called Charterhouse. Sutton's will placed its government in the hands of "a body politick and corporate to have continuance forever by the name of The Governors of the Hospital of King James." Finally, there existed the possibility of foregoing the privilege of incorporation altogether, and of entrusting a school and its government to a board of unincorporated trustees or feoffees. A noteworthy example of this kind of school is given in Rugby where, in 1567, one Lawrence Sheriffe, a London grocer, founded a Free School and Almshouse. He placed the management of the property and the supervision of the school, including again the hiring and firing of the master, in trust to two of his friends and their heirs. Such an unincorporated trusteeship, however, was a somewhat chancy venture since it could happen, as it did in the case of Rugby, that the trusteeship might devolve on a single trustee or disappear altogether. This weakness inherent in the original trusteeship arrangement was overcome subsequently through the enactment of the Elizabethan Statute of Charitable Uses (43 Eliz. I, c. 4). Under this legislation royal commissioners visited Rugby and appointed a board of twelve trustees to assure the continuity and preservation of the trust.

Though the trusteeship as a form of academic government did not reach its most widespread use until the second half of the seventeenth century, it had become important well before that time. In the common law courts persons only, whether natural or articficial, were recognized as being capable of holding property. As was demonstrated at Rugby, it was dangerous to place property in the name of an unincorporated group, unless under the law of equity the property was given in trust to specified persons for designated uses, such as the provision of a free grammar school for the boys of a given town. With the Statute of Charitable Uses of 1601 such trusts then came under the supervision of royal charity commissioners whose duty it was to protect the interests of the beneficiary of the trust. With charitable trusts there rarely were named specific beneficiaries, but the public was to profit from the proper functioning of the trust. The purposes for which a charitable trust is established, wrote Scott, "are beneficial or may be supposed to be beneficial to the community." The advantage of a trust arrangement was that it avoided the expense and time required for obtaining a charter and that it relieved the founder of the necessity to seek approval and consent of royal officials for the purposes of his grant. This freedom from royal interference proved a God-send to dissenters after 1662 when the renewal of the Act of Uniformity and the Five Mile Act of 1665 prohibited non-conformist teachers from carrying on their occupation in the universities and incorporated schools. Ejected from established institutions, these men looked for a means to establish schools of their own and to run them at their own expense and under their own control. Under these circumstances the dissenting academies made their appearance and began to flourish with the accession of William and Mary and the Toleration Act of 1689. The trusteeship was the appropriate legal means readily at hand. As Maitland put it well:

> All that we English people mean by 'religious liberty' has been intimately connected with the making of trusts. When the time for a little toleration had come, there was the Trust ready to provide all that was needed by the barely tolerated sects. All that they had to ask from the State was that the open preaching of their doctrines should not be unlawful.

Maitland goes on to say that the trust arrangement permitted the authorities of the established church and state to wash their hands of the authorization of schools for dissenters since trusts did not require charters. Thus, he wrote, they "could not be accused of any active participation in heresy and schism," while at the same time the dissenters were free not only to found churches but schools and academies as well. In time the dissenting academies became so successful that their fame seriously threatened the reputation of the universities. By the eighteenth century, when colonists in Connecticut and in the Middle Colonies contemplated the establishment of colleges, the academies and their establishment as trusteeships provided another model to follow.

We are now in a position to assess the views of higher education held by the Protestant settlers in seventeenth century North America and the institutional models of higher schools known to them. In the Massachusetts Bay Colony and in Connecticut the Puritans continued to affirm the medieval concept, albeit in its Protestant version, of a common interest of secular and ecclesiastical rulers in supporting a _studium_ which would supply the future servants of both _regnum_ and _sacerdotium_. In Virginia Anglican parsons, planters, and legislators jointly nurtured hopes for an English college to take on its educative and refining task for the colony's future leadership in state and church. But this common interest was all the likeness to medieval conditions that the New World would permit. Neither in 1636 nor in 1701 could New England's Puritan settlements boast of corporations of either masters or scholars freely associating with one another in the pursuit of studies, nor did such circumstances characterize Virginia in the 1690's. There also was scant prospect for surplus wealth in those early decades enough to fund and endow colleges on the English pattern. However much the colonists were committed to the idea of a university and its function within their civil and ecclesiastical communities and however consciously they were bent on holding fast to the inherited _artes liberales_ and professional studies, economic and political realities set limits and created institutions which were modern rather than medieval in structure, governance, and means of support.

Given the colonial situation it was the circumstances of Reformation Europe and academic institutions founded under those circumstances that proved suggestive and adaptable to the American environment. The universities and colleges of Reformation Europe were newly created institutions, not corporations of long history and deeply entrenched traditions. Their newness recommended them as examples for the colonists. During the half-century straddling the year 1600 new universities were founded in the Protestant countries on the continent at Leyden (1574), Helmstädt (1576), Franeker (1585), Giessen (1607), Groningen (1614), Strassburg (1621), Rinteln (1621), and Altdorf (1622). In England new colleges rather than universities were chartered at Oxford and Cambridge, in Scotland at Edinburgh and Aberdeen, and in Ireland at Dublin. Such college foundations possessed advantages for the Massachusetts settlers, since they were less ambitious and costly than the creation of a full-fledged university with its several faculties and its staff of professors. Trinity College, Dublin, must have appeared particularly appropriate to the Massachusetts Puritans since it was constituted expressly as "a mother of a university" with the understanding and hope that, in time, it would be joined by other colleges to form a university with all the faculties. Furthermore, like Harvard it was an offshoot of Cambridge, planted in the "wilderness," and, though limited in the beginning to the arts faculty, empowered, if it chose, to grant degrees in all faculties. Contemporary continental universities and English colleges thus presented themselves as possible models for a studium in the English speaking colonies of the New World.

But the colonists did not begin by founding a university or college. To the extent that in seventeenth century New England they believed themselves unauthorized to charter colleges and deemed it unwise to request letters patent from the Crown for a Puritan foundation, they could fall back on the models of a continental gymnasium illustre or an English grammar school. If they were to opt for a continental gymnasium illustre, however, they would inherit, almost without exception, the pattern of municipal ownership and government and thus sacrifice the support and resources such a school might command were it a province or colony-wide institution. They would have faced the same problem with a municipal grammar school on the English model and, in addition, would have faced the question of incorporation. Should they have considered creating a colonial counterpart to St. Paul's and Merchant Taylors, they would have encountered the relative poverty of guilds and associations in the colonies. The lack of surplus wealth and, once more, the hesitancy to ask for incorporation presented the obstacles. There was left, then, the trusteeship on the model of Rugby. This device avoided the necessity of incorporation, but suffered from the dearth of easily available local resources.

Which solution, then, did the colonists pursue? In New England they transformed the European gymnasium illustre into a provincial collegiate school. As the Puritans meant to give priority to the preparation and training of their ministers and magistrates, municipalities in the Bay Colonies had begun within the first two decades of the colony's founding to organize town grammar schools. These appeared in Boston, Charlestown, Ipswich, Salem, Dorchester, Newbury, and Cambridge. But these schools were not *gymnasia illustria*. No town was wealthy enough to support more than one schoolmaster, let alone *doctores* and *professores* of several faculties. If professional education worthy of its name was desired, public funding could not be made the responsibility of municipalities. The colony as a whole would have to shoulder this task. The expressed concerns of the founders of Harvard and Yale also show that these were not focused on any one town, but on the colony or province as a whole. Their church was the colony's church; their government was the General Court. This means, then, that translated from Europe to New England, the municipal *gymnasium illustre* became a provincial collegiate school. As such Harvard began its career in Massachusetts from 1636 to 1650 and Yale did the same in Connecticut from 1701 to 1745.

In Virginia more than eighty years of English settlement had passed before endeavours to found a college got under way in earnest. In contrast to New England, this land of dispersed settlements and plantations lacked the kind of town government that could have taken in hand the creation of municipal or other grammar schools. Being under the ecclesiastical supervision of the Bishop of London the colony depended for the licensing of schoolmasters on an authority geographically far removed, and Governor Berkeley could truthfully (and, as it was, thankfully) report in 1671 that there were neither grammar schools nor colleges in Virginia. The assembly had tried unsuccessfully in 1661 and 1662 to order subscriptions for the purchase of land to erect such school and college "for the advance of learning, education of youth, supply of the ministry, and promotion of piety," but Anglicans remained suspicious of schools and scholars since they feared, as Berkeley had expressed it so well, that learning "brought disobedience, and heresy, and sects into the world." It was then James Blair's initiative in the 1690's that led to the opening of the first grammar school in Virginia. Founded as an integral part of the projected College of William and Mary and constituting together with the Indian School until 1729 the only physical evidence for the college, this school was an English grammar school, royally endowed and placed under the direction of a provincial board of lay trustees.

All of the first three colleges were initially held in trust by feoffees. In New England these were appointed by colonial assemblies and in Virginia by the Crown. Under the Elizabethan Statute of Charitable Uses (43 Eliz. c. 4, 1601) these institutions were charitable trusts endowed for the public benefit under the supervision of royal commissioners appointed by the Lord Chancellor. In the early seventeenth century, however, it was not clear whether the Statute of Charitable Uses was in force in the colonies, or whether as part of the King's dominion the colonies fell directly under the prerogative of the Crown. The issue seems to have been adjudicated first in Calvin's Case of 1608, one year after the establishment of the English plantation in Virginia. According to Calvin's Case Parliamentary acts and statutes enacted before the time of settlement were considered to be in force in the King's dominions only when they were locally adopted. Neither in Virginia nor in New England had the Statute of Charitable Uses been locally adopted, and the New England colonists could argue with considerable reason that with the Crown's tacit consent their own highest court functioned as visitor of charities and sat as a court of equity. The Virginians, having received a royal charter for their college, were more closely bound to the Crown's prerogative; besides, their charter had provided them with a representative in London in the person of the college chancellor. This way of arranging for the supervision of the respective trusts also corresponded to the sources of the various gifts, bequests, and endowments. In Massachusetts and Connecticut the trust funds consisted of public moneys voted by the colonial assemblies and of contributions made or expected to be made by private citizens. In Virginia the bulk of the trust had come from the Crown. But whether under the supervision and appellate jurisdiction of a colonial General Court or of a chancellor in London, the provincial colonial schools were inaugurated as trusts and their initial government was by boards of trustees.

Our first three colleges all began their careers under a trusteeship form of government. In Harvard's case this pre-incorporation period lasted fourteen years, in William and Mary's thirty-six, and in Yale's forty-four. Due to their native public sponsorship, the two New England schools resembled in their governmental structure the continental _gymnasia illustria_ as they existed in Geneva or Strassburg. William and Mary, under the watchful eyes of Anglican dignitaries, began its career under a trusteeship arrangement somewhat akin to that of the grammar school at Rugby. All three schools, however, served a colony-wide or province-wide public. They were not, as many of the European schools, local in origin and function. All of them outgrew their grammar school or _gymnasium_ stage and like their European cousins at Strassburg and Geneva eventually assumed collegiate or university status. These reflections compel us, I believe, to revise some of our traditional views on the derivation of American universities from those of Europe and to devote greater attention than we have paid so far to the subject of the history of college and university law and governance.

6. Harvard College, 1636-1707: The Challenge to Government by Church and State

Of the three colleges in existence at the end of the eighteenth century's first decade only Harvard was a chartered corporation and could look back on a history of over half a century. The Collegiate School in Connecticut, chartered in 1701, and the College of William and Mary, chartered in 1693, resembled English grammar schools and were governed by boards of trustees. Harvard had withstood successfully a challenge to its form of government by ministers and magistrates and, by 1707, had reaffirmed its charter of 1650 which provided for a corporation of fellows and a board of overseers. The challenge, spearheaded by Increase Mather and several like-minded orthodox Congregational ministers, had been to break with Reformation tradition and evict the magistrates from college government. It had been repulsed. In neighboring Connecticut the Mather scheme had been partially successful when the Collegiate School was founded and administered by a board of trustees consisting exclusively of Congregational ministers. No magistrates were involved, though the General Court passed the charter and promised financial support. In Virginia the College of William and Mary lacked masters who were to constitute its corporation. It thus came to be entrusted to a group of Virginia gentlemen who were to administer the funds and property given by the Crown. In all three colonies representatives of the lay public were thus involved in college government. In Massachusetts magistrates served on the Board of Overseers; in Connecticut they provided funds, and in Virginia they served as trustees. Their participation, though in various ways, testified to the fact that in these three English colonies in North America the academic institutions were not founded on the pattern of medieval universities with their corporate autonomy, but after the model of schools of the Reformation under the joint supervision of secular and ecclesiastical authorities.

The eighteenth century thus was to begin with college government still following the broad outlines set by the Reformation. Increasingly, stresses and strains would come to be visible, for the fundamental demographic base of the Reformation settlement was already being eroded. No longer could it be assumed that a secular commonwealth -- be it an American colony, a European principality or the British Empire -- could enforce an established religion on its citizens and in its colleges. This, if nothing else, should have been evident to the colonists when in 1689 the Crown issued the Act of Toleration. Against this fundamental shift of demographic alignments and of policy based on it must be seen Mather's attempt and failure to stem the tide of religious diversity and toleration. Against Mather's wishes, clergymen and magistrates were to remain in Harvard's government even though they might no longer be able to agree on the maintenance of congregational orthodoxy. In disputes with the college's tutors they were soon to find a common interest that cemented over whatever rifts may have separated them on religious grounds. But for the fact that the incompetence of the Virginia clergy had kept them from joining the gentry in the governance of the College of William and Mary, a development similar to that at Harvard might have ensued. But the gentry treated the clergy with ill-disguised contempt, and the battle in Virginia came to rage between clergymen-professors on the one hand and gentlemen-visitors on the other. In Connecticut that conflict took the form of confrontation between President Clap and the Assembly in 1763, only to be resolved before the century's end in the participation of the magistrates in the corporation. What all this means is that the form, if not the spirit, of the Reformation type of college governance by joint ministerial and magisterial oversight not only survived into the eighteenth century but remained viable well into its second half. Attempts as at Harvard in the 1790's and in Connecticut in the mid-1700's to turn the colleges into religious seminaries under the exclusive oversight of clergymen failed as did also efforts of the tutors at Harvard in the 1720's and of the professors at William and Mary in the 1750's to regain for themselves the privileges of corporate autonomy that had been the hallmark of the medieval university. Neither Harvard nor Yale nor William and Mary could do without the support of the civil government; not one of them was allowed to do without some sort of supervision by external authorities representing the government of their respective colonies. Participation of both the secular and the ecclesiastical governments in the supervision of colleges, which had come to replace traditional academic corporate autonomy at the time of the Reformation, was to persist into the eighteenth century.

6.4

For Harvard College the initial stimulus and the first pledge of financial support had come from the colony's government, the General Court. Nearly two hundred years later, when questions were raised over the relationship of the college to the government of Massachusetts, Daniel Webster affirmed the Court's role. This happened in 1821, barely two years after the United States Supreme Court had endorsed Webster's contention that under its charter Dartmouth College was independent of the state government of New Hampshire. In the case of Massachusetts and Harvard College, however, Webster held differently:

> The government of the colony [he said] was the founder of this institution; not in consequence of having granted the charter, but in consequence of having made the first. endowment. As founder, it was entirely competent to the government to prescribe the terms of the charter, to grant the property, subject to such limitations as it saw fit, and to vest the power of visitation and control, wherever it judged most expedient.

By resolving to erect a college and by pledging 400 lbs. the General Court continued in the New World the common 16th century practice of European governments to found and supervise academic institutions for the training of their civil servants and of their ministers of the established church.

Questions have been raised whether the Court's pledge of October 28, 1636 can be accepted as the founding date of the college and whether the pledge of 1636 is sufficient to establish the Court's claim as the founder of the college. To both questions, I believe, the answer must be yes. It is true that instruction did not begin until two years later, but the commencement of teaching is not usually taken to determine the founding date of a university. Rather it is the issuance of a first charter, papal bull, or other formal document such as the 1636 act of the Massachusetts General Court which is commonly used to determine the foundation date. The sufficiency of the Court's claim as founder of the college must be derived from Chief Justice Coke's 1612 decision in the Case of Sutton's Hospital. Sir Edward there confirmed that "the first gift of the revenues is called the foundation, and he who gives it is the founder in law..." The argument against the Court's role as founder points to the Court's inability actually to pay the ₤ 400 as specified in the 1636 resolve, and to the far larger donation of ₤ 779-17-2 bequeathed by John Harvard upon his death on September 14, 1638. The size of the donation, however, is irrelevant to the question, and only its timing matters. We thus must consult the receipts of the college. Unfortunately, exact figures are not available before 1644. Margery Foster claims that the college received from the tax levies of Watertown and Cambridge ₤ 79-3-3 before 1644, and the colony's treasurer reported that in 1639 ₤50-12-00 had been paid to the college from the colony's funds. According to Foster the Court acknowledged on October 27, 1647 that it still owed the college L 190-16-00 of the original ₤ 400 grant, yet by October of 1650 the pledge appears to have been paid in full. Of John Harvard's gift we know that Nathaniel Eaton, the college's first master, reported to have received and spent ₺ 200 for the construction of the college house, and this appears to have been done in 1639. We further know that during the early months of 1644 the colony's treasurer acknowledged the receipt of ₺ 175-3-00 from John Harvard's legacy, but there is no indication that that money then was paid over to the college. The best we can do, then, is to state that in 1639 the college treasury received funds from the colony's treasurer and that, in the same year, Mr. Eaton received funds from John Harvard's executor. Whether a claim to priority can be established between these two transfers of funds is doubtful. What remains unquestioned, however, is that the colony's grant was the first to be announced and pledged.

As soon as the colony's situation would permit, the Court arranged for a committee "to take order for the college." This it did on November 20, 1637 when the crisis of the first war with the Pequods had passed, and both church and commonwealth had dealt with the heretical views of Anne Hutchinson through excommunication and banishment of the offending woman. The committee consisted of the colony's governor, the deputy governor, and the treasurer of the colony as well as of three magistrates and six ministers. These men or a majority of them which always was to include the governor, deputy governor, and treasurer were to be responsible for the college -- the word "school" having now disappeared in the colony records. The college was to be a colonial or provincial institution, not just another grammar school of which there had been talk and early moves in Boston, Charlestown, and Dorchester. It was to serve the cause of Puritanism in Massachusetts and all of New England, taking students from all parts of the expanding colony and neighboring Puritan settlements. It was to house its students and to take them beyond their grammar schooling through the traditional curriculum of the *artes liberales* to the point at which they would equal in their academic accomplishments the graduates of the colleges at Oxford and Cambridge in Old England. In their most ambitious dreams the colonists saw the college as the fountain of a conquering world-wide Puritanism. In the fashion of the Reformed countries of Europe they entrusted the government and oversight of their college to a committee of their provincial legislature.

The understandable desire to give to Harvard's institutions as venerable an ancestry as possible has led Morison to call this committee of the General Court the first Board of Overseers. This claim, however, is difficult to uphold. Morison tells us that the committee members were called overseers in common speech and more formally *inspectores*. But this Latin term is reminiscent of the various titles used on the European continent to designate government appointed governors of academic *gymnasia* and of universities. In the Netherlands such men were called *curatores*, in Strassburg *scholarchs*, and in Lutheran countries *reformatores*. Morison notwithstanding, the Massachusetts inspectores of 1637 were not constituted as a governing board, had neither permanency nor autonomy, and were in fact nothing more than a Court appointed committee. It was precisely their ephemeral nature as a committee -- at commencement in 1642 only six of the original twelve appointees were still present in the Bay Colony and no provision allowed for the replacement of those who had left -- which led to the eventual reconstitution of the overseers in 1642 as a permanent board. The original overseers, while being forerunners of the Board established in 1642, were a committee of the Court and, as events soon showed, were allowed to act independently only at the pleasure of the General Court.

The limited authority permitted the committee became evident soon in their dealing with the college's first and sole master, Nathaniel Eaton. The committee had appointed Eaton and had watched the arrival of the first students and the beginning of instruction in July or August of 1638. But the first master made his mark more on the bodies than on the minds of his students, and the Court intervened, ordered an investigation and trial, and fined and dismissed Eaton "for cruel and barbarous beating ... and for other neglecting and misusing of his scholars..." Left without a master the college closed its doors in September of 1639. In the following August action was taken again by the Court, rather than the committee of overseers, and the magistrates and ministers of the Court invited Henry Dunster, just arrived in the Bay Colony from a position as schoolmaster and minister in England, to serve as president of the college. As president Dunster quickly and energetically seized the reins of the institution and in 1642 presided over the first commencement. He bestowed bachelor's degrees on nine young men, the college's first graduating class. Four days later, no doubt relieved and impressed by Dunster's vigor and success, the Court reconstituted the inspectores as a quasi-corporate board, allowing them a greater and more direct share in the government of the college.

While the governmental and administrative authority of the newly-constituted overseers was delegated to them by the Court and remained subject to the Court's interference , the overseers' financial responsibility as trustees of the college property was made permanent and subject only to the equity jurisdiction of the Court. The overseers now consisted of the governor, the deputy governor, the college president, all nine assistants of the Court, and the nine pastors and teachers of the six adjoining towns. As governors they were now formally charged by the Court with drawing up from time to time the statutes fo the college. This gave them a function reserved on the European continent to government-appointed reformatores who were granted the power to "reform," i.e. alter the statutes presented to the college by the secular ruler. Compared with practices in England, it gave them a right commonly reserved to a college founder or his or her representatives. For the execution of their duties as governors, representatives of the college founder, and trustees they were empowered to act by majority vote, and a majority of their number was given the power to act for the entire body. Thus, for all intents and purposes, the overseers were constituted a body politic and corporate without, however, an explicit and formal act of incorporation. It should be noted also that the Court refrained from designating them officially as a Board of Overseers, that the College Book copy of the September 27, 1642 resolution speaks of them as "Company of Overseers" (the Massachusetts Bay Records only state "overseers"), and that their decisions remained subject to appeal by aggrieved parties and, if the appeal went unheeded, to action by the General Court. The overseers thus were a quasi-corporation in the accepted meaning of that term: A group of citizens established by a superior government for the purpose of exercising delegated subordinate governmental functions of legislation and administration, yet lacking autonomy as well as a formal charter of incorporation. With these attributes of a civil corporation the overseers combined their status as unincorporated trustees of the college property. The college was a charitable trust, the overseers the trustees, and the then current and future citizens of the Massachusetts Bay Colony the beneficiaries. The new board was a more viable body than the original committee; but it was far from autonomous. It and the college remained subject to the direct control of the Court which had brought them into being.

Within eight years of the formal constitution of the company of overseers President Dunster petitioned the Court for a charter of incorporation. The Court objected to the presence of magistrates on the corporation because as members of the Court they were overseers and thus would "be judges in points of difference that shall or may fall out" between the corporation and the overseers. Similarly, the Court suggested that ministers might want to refrain from becoming members of the corporation since at least those in the surrounding towns served also in the capacity of overseers. With the Court's specific reservations and general willingness clearly expressed, neither Dunster nor the overseers hesitated long. They prepared a draft charter and submitted it to the General Court. On May 31, 1650, the charter having passed the Court on the preceding day, Governor Dudley affixed his signature. Harvard College now was a corporation.

What was the import of this action taken at the end of May, 1650? The first feature to note about the new college corporation is that it did not enjoy the customary privileges of self-government of an English university college. The corporation was to consist of president, fellows, and treasurer. They were to take corporate possession of the institution and its property and, as a corporate body, were to have the right to succession in perpetuity, to receive and hold property, to sue and be sued, to have a seal, to appoint officers and servants, and to be exempted from taxes, duties, and customs. As individuals the members of the corporation as well as the students, officers, and servants of the college were to be exempted also from civil office, military service and watch duty as well as from personal taxes on their estates as long as these did not exceed one hundred pounds. Yet the corporation was permitted to exercise its right to perpetual succession only in the presence of and with the counsel and consent of the overseers, and it could enact by-laws and decide disuputes as well as "great and difficult" cases only with the consent of the overseers when a general meeting of corporation and overseers had been called. The charter in effect placed the corporation under the supervising authority of the overseers in all matters that went beyond routine questions of daily administration.

The Court's desire to keep effective control in the hands of the overseers becomes particularly apparent when one considers the provisions made for financial responsibility. The charter had given as reason and occasion for incorporation the rapid accumulation of gifts, bequests, and revenues in the hands of trustees who met only infrequently. In order to remedy this defect and create a permanent body to receive funds and property the Court established the corporation. At the same time, however, the Court never dissolved the trusteeship of the overseers over the college funds, but specifically affirmed the overseers' supervisory powers. We may assume that members of the Court placed greater reliance on the overseers than on the corporation. Consisting of President, treasurer, and five young men -- only two of whom had obtained the degree of magister artium and thus qualified as teachers -- the corporation had no more than four out of its seven members who inspired confidence in their abilities to manage and govern the college. The question thus faced by Dunster, the overseers, and the Court was whether they could or should transfer the trust funds and the powers of government without reservations or safeguards from the overseers to the corporation, from an established and proven group of responsible fiduciaries to an untried society of largely youthful and untested scholars. While they thought it necessary that there be in existence a more constant governmental and administrative authority than the one provided by the overseers, they nonetheless abstained from passing the full authority of the overseers on to the new corporation. Thus they effected a compromise which limited the autonomy of the corporation by placing it under the trusteeship and co-government of the overseers.

What, then, was the position in which the new charter placed the overseers? Obviously, they were not a corporation, and cannot therefore be seen as the New England version of an incorporated board of governors as exercised control over English grammar schools such as St. Paul's or Merchant Taylors, or over hospitals and colleges such as Thomas Sutton's endowment at Charterhouse. Not being incorporated the overseers could not easily apply the ruling in the 1612 Charterhouse case to themselves, which had held that "if no visitor had been appointed by the charter, the governors should visit." Besides, in English college corporations the function of visitors concerned the safeguarding of the interests of the founder, of the corporations' faithful observation of the terms of the original bequest, and of the members' adherence to the statutes. If disputes arose within the corporation the visitors were to serve as a court of appeal and to settle such issues as had arisen. The Harvard overseers, however, were far more intimately tied into the on-going operations of the corporation than English college visitors normally were, and as trustees and co-governors could be said to fall themselves under the visitatorial jurisdiction of the General Court as both founder and highest court of equity in the colony. In the absence of court rulings or legislation on these matters, it is admittedly difficult to come to a definitive conclusion, but it does not appear that the overseers could be viewed as visitors. The Court, rather than the overseers, visited the college. If we look to England for applicable comparisons, we should then see the overseers as unincorporated governors or trustees sharing authority with the corporation and exercising implicit veto powers over the corporation's major decisions. In 1657 the General Court confirmed these powers and the overseer's continuing responsibility as trustees. It then issued an appendix to the charter which replaced the requirement of the overseers' concurrent consent to corporation decisions with a reminder of the corporation's accountability to the overseers and the latter's power subsequently to alter or veto corporation decisions. In actual fact, as Morison points out, the overseers more than once exceeded their "consenting" function -- whether concurrent or subsequent -- and took the iniative in settling stipends and ordering the treasurer to disburse funds. They acted very much as trustees and assumed full responsibility for the college's financial affairs. More yet, they rather than the corporation elected Dunster's successors Charles Chauncy in 1654 and Leonard Hoar in 1672. They thus were the de facto, if not the de jure, governors of the college. Harvard College as a foundation of the General Court and the overseers as the representatives of the civil and religious authorities of the Massachusetts Bay Colony may serve easily as illustrations for the re-emergence in New England of the Protestant concern for subordinating the medieval studium to the combined interest of state and church in a Reformation settlement. What the Harvard Charter of 1650 thus exemplifies is the carefully wrought compromise between a medieval tradition of corporate autonomy and a modern concern for territorial authority over all matters of State and religion. The 1650 government of Harvard College thus was a novel phenomenon conceived of different European traditions and born and weaned under the particular conditions of the Massachusetts Bay.

Finally, we must confront the question of the Court's authority to incorporate the college. From the Colony Records it appears that the Court showed little or no hesitation to do so. Morison thinks that it was a "remarkable thing" for the Court "serenely" to assume that it possessed the sovereign power to create a corporation." The Court adopted this assumption, Morison wrote, because "King Charles was dead, and the rulers of Massachusetts Bay were determined never to admit that the smallest part of the royal sovereignty over their Colony had devolved on the Long Parliament." Andrew M. Davis, too, thinks that the Court had waited with their challenge to the King's prerogative "until the ascendency of Cromwell seemed so well assured that they ventured to overstep the mark." Both authors leave us to conclude that the Court had acted audaciously, and that it was aware of the risks it ran. Other scholars, however, tend to downgrade the boldness of the Court's break with English legal practice. They point out that as separatists and congregationalists the New England settlers were firm believers in their right of free association for civil and ecclesiastical purposes, a right the Pilgrims had exercised with the signing of the Mayflower Compact and the Puritans practiced when they founded churches by covenant. Yet another view holds that the Court was little concerned with legal technicalities and acted on purely pragmatic grounds to provide for a more efficient government for the college. With the King's decapitation the Court did not consider as binding law the dictum that one corporation could not incorporate a group of individuals unless specifically so authorized by the Crown. For legal authority, the argument goes, the Court could have relied on royal statutes which provided for the general incorporation of hospitals (39 Elizabeth, c. 5 (1597) and 21 Jac., c. 1 (1625)). All of these views, to be sure, are speculative since no direct evidence of the Court's thinking and motivation has been preserved.

Did the Court act audaciously? Did it knowingly and deliberately violate the traditions of English law? We have no direct evidence that might enable us to answer these questions with certainty. All we know is that the Massachusetts settlers were not entirely ignorant of the common law, and that they might have known of Lord Coke's famous 1612 decision in the Case of Sutton's Hospital. Here Coke had laid down the rule "that none but the King alone can create or make a corporation." But against this must be held a 1568 decision in which the Court of King's Bench had held that while a subject could not create a corporation, the Crown could delegate such right, "the statute of mortmain or any other statute to the contrary non obstante," provided that the subject acted strictly in accordance with the royal grant. At such occasions, the Court had held, the subject's action will be seen as the Crown's. Unfortunately, this does not yield clear answers to the questions whether the Generl Court had grounds to believe it had always possessed such delegated authority, or whether with the King's death this authority had descended upon it. Next we must examine the proposition that the Court's incorporation of Harvard College was analogous to the establishment of churches, congregations, parishes, cities, towns, villages, precincts, wards, and other such units of ecclesiastical and civil government. This argument, however, misses the point, since none of these governmental units had been formally incorporated by charter. They were quasi-corporations without charter and similar in legal standing to what the college had been before its incorporation in 1650. After 1650 Harvard was no longer a quasi-corporation, but a fully chartered body politic. For the same reason we cannot take much comfort from the argument that in 1696 an English court upheld the right of the City of London to create guilds and fraternities, but not corporations. Apart from the fact that this was a decision subsequently given, it concerned the creation, not of corporations, but of fraternities and guilds. We thus come to the alleged violation of the rule that one corporation cannot create another corporation without the specific authorization of the Crown. We are here on rather uncertain grounds whether the rule had been accepted as law in the first half of the seventeenth century. The rule was firmly stated by Chief Justice Lord Kenyon in a 1798 case, but before that date its validity remains in doubt. As to the last point--whether or not the general incorporation statutes for hospitals and houses of correction 1597 and 1625 could serve as authorization for the Court to incorporate Harvard College -- we are reduced again to a doubtful proposition. The statutes were intended to encourage the founding of charitable institutions by relieving the founders of the high costs of incorporation and of the license of mortmain. They promised automatic incorporation by Parliament once the founder had registered a deed in chancery court. Nothing in these statutes detracted from parliamentary or royal authority to incorporate. Again we return to the question whether the Court could have assumed that his authority had devolved on it, and we must confess our inability to find strong and clear evidence for or against that proposition.

What are we to conclude? First of all, we must dismiss the suggestion that the act of 1650 was similar to the establishment of a quasi-corporation. Quite the contrary, the act transformed the college from a quasi-corporation into a fully chartered corporation. It was indeed a full charter of incorporation. Secondly, we must recognize that the question was and is whether the General Court could rightfully claim the power of incorporation by charter. The existent evidence neither supports nor denies this proposition unequivocally. It is likely, and I believe this to have been the case, that the members of the Court were divided on this issue. But given the Court's desire to strengthen the administration of the college, given its assurance that the colony's hopes and plans for the college now were shared by the party in power in England, and given its certainty that their proposed act did not clearly violate a statute or an undisputably accepted rule of law, it went ahead and incorporated the college. The question at issue thus never really was the constitution of the college as a society or quasi-corporation. The question concerned the Court's issuing a formal charter of incorporation. With this act the Court moved into new territories without precedent or map to guide it. Only the future could justify or condemn its action.

The next thirty-five years were to provide a period of testing for the new constitution. The remainder of Dunster's administration made painfully clear how weak the corporation was, and how its weakness invited the Court to ignore it, to exercise its own powers and, in violation of the letter and spirit of the charter, to increase the powers of the overseers at the expense of the corporation. It was in part over this issue that Dunster resigned in 1654. A reversal of this trend towards greater powers for the overseers began with the 1657 appendix to the charter and culminated in the issue of a new, additional charter in 1672. The authority of the corporation, in particular over the college funds and property, was restored. What had led to the growing acceptability of the corporation in the eyes of the Court was its changed composition. In 1672 all five fellows held the M.A. degree, and three of the five were non-resident ministers and served as overseers. Apparently the Court's earlier reluctance to allow ministerial overseers as fellows of the corporation had disappeared. What led to this change in attitude we do not know with certainty. It appears likely, however, that with the Court having repeatedly assumed the function of visitors, its members did not see the overseers sitting as visitors in judgment on the decisions of the corporation. Rather they saw corporation and overseers, each in their own fashion, sit as two governing boards of the college with the members of the Court themselves acting as visitors. Now, with membership being possible on both boards, a trend towards amalgamation of corporation and overseers became visible, and the Court openly encouraged that trend. Under these changed circumstances the corporation was about to regain all the powers granted it in the charter of 1650 and partly lost in the 1650's and 1660's. Thus matters stood in 1685 when the Bay Colony learned of a radical shift in the political situation. The colony lost its charter and with it, it was believed, the college charter. "The calf has died in the cow's belly," as a contemporary is said to have expressed it. Constitutionally speaking, the college was now in limbo.

The ensuing twenty-two years witnessed an intermittent struggle to obtain a new charter for the college until, in 1707, Harvard resumed its government under the charter of 1650. These were years of intricate maneuvers and seemingly fruitless endeavours. Yet they nurtured far-reaching constitutional challenges, even though they were topped with an anti-climactic denouement. Some of the fruits of these years would appear decades later; others when colleges were founded elsewhere: the College of William and Mary in Virginia and the Collegiate School in Connecticut. The former's promoter obtained a charter for the college in 1693; the latter school was chartered by the Connecticut assembly in 1701. For Harvard these years were dominated by the imperious and grouchy Increase Mather who, refusing to give up his residence in Boston, had taken on the college presidency in 1685 and, after his confirmation by the Council of New England in 1686, presided as absentee rector until 1890. With the Glorious Revolution and the over-throw of the Dominion of New England, corporation and overseers expected to return to traditional ways. On June 2, 1690 they re-elected the absent Mather as president, and Nathaniel Gookin and Cotton Mather as fellows. As Increase Mather had been residing in London as agent of the Bay Colony, since 1688, the immediate government of the college was in the hands of the resident tutors and fellows, John Leverett and William Brattle. In England Mather toyed for a while with the idea of asking for a new charter from the new monarch now on the throne but, as Morison tells it, was advised to have the General Court proceed with the incorporation and then submit the charter for confirmation to the Crown. While Mather returned to New England in May of 1692, his Virginia competitor in the charter-seeking business remained behind and garnered his prize in the following year. Perhaps it was easier to pry loose a college charter from the Court when the Anglican hierarchy would lend its assistance. No such aid, of course, could Mather expect for the Puritan college in New England. Thus when he returned to Boston Mather immediately set to work to have a new charter drafted. He had it accepted by the General Court and signed by Governor Phips on June 27, 1692. Little did he know then that for him that success would turn out to be but the first and quite ineffectual step of a long and dreary journey.

Despite its ultimate rejection the 1692 charter must rank as a milestone in the constitutional history of American colleges. It marks the first attempt in America to dissolve the Reformation settlement by removing the representatives of secular authority from direct participation in academic government. It was a challenge to the practice first introduced in southern Europe during the Middle Ages and later, during the Reformation, elsewhere on the continent. It is perhaps not too much to claim that the re-clericalization of college government attempted here signalled the uneasiness of established ministers in the face of a growing denominational diversity among the population. The underlying reason for the intended exclusion of government officials was, as Morison has pointed out, the fear that "a few Anglicans or even Baptists might obtain ex officio seats." Should this happen the Reformation's cuius regio eius religio would be seriously compromised, and the policy of an established church determining the religious direction of the territorial college or university be endangered. This threat would eventually manifest itself in Connecticut and produce the crisis of Yale College under President Thomas Clap. In 1692 it was Mather's desire to avoid such a crisis at all costs, and he intended to ward it off by abolishing the overseers with their representation of colonial officials and ministers of surrounding towns. His charter set up a corporation government that resembled practices in the English universities while at the same time it recognized the inclusion of both resident and non-resident fellows in the corporation. All the eight fellows named in the charter held their second degree in the arts faculty, but only two of the eight -- John Leverett and William Brattle -- were to live with the students as their tutors. The most recent graduate of the college among them had received his B.A. eight years earlier; the one most removed from his own student days had graduated forty years earlier. Surely, this corporation of ministers and tutors was "respectable"enough. To add even further luster to the corporation Mather quickly made use of another novel provision written into the charter: The college now claimed the power to grant degrees in other than the arts faculty as well. The new corporation asked the President to accept the doctor of theology degree and, invested with his new dignity, to confer upon the two tutors the degree of bachelor of theology. And so it was done. Besides these remarkable new provisions the charter granted the corporation the usual rights of perpetual succession, of managing the college property, of suing and pleading, of having a seal, of hiring and firing college officers and servants, and of making statutes, orders, and by-laws. It also contained tax exemption privileges for the college and its officers, as well as exemption from civil office duty, military exercises, and watching and warding for the president, fellows, scholars and fifteen officers and servants. All in all, the Mather charter was at once reactionary and revolutionary. As George H. Williams has shown, with its "gestures of academic sovereignty" it borrowed heavily from the precedents of medieval universities. It broke with two-board government, created an English-style -- albeit largely non-resident -- college corporation of a pronounced clerical character, and elevated the college to the rank of institutions conferring degrees in all the faculties. Here was a bold declaration of academic independence under ministerial tutelage.

But for the next few years neither the abolition of the overseers nor the elevation of the college to a degree-granting university captured the attention. The issue of debate came to be the question of visitation. The charter did not provide for visitation by anyone; neither by the Assembly, nor by the governor, nor by the Crown. By 1696 the colonists came to learn that the omission of King and governor as visitors had prompted the Privy Council to disallow the charter. If the college was to regain its legal footing, the effort at obtaining a charter had to be undertaken once more. But now a new difficulty arose. Mather's strategy had to reckon on the one hand with the corporation's desire to accept and incorporate into the charter the Crown's and the governor's power to visit, and on the other with the aroused ill-will of the magistrates -- excluded so abruptly from their position as overseers -- who insisted on their right to visit the college together with the governor. Thus the question came to be: Who shall be the college visitor? The King and the governor, or the governor and the Council? Both House and Council tried their hands at charter drafting and produced their new version on December 17, 1696. This draft provided for a president, a treasurer, and fourteen fellows, the latter to be elected for ten-year terms. The charter specified a quorum of ten for meetings concerning the college revenues and a concurrence of nine voting members for the election and the dismissal of president and fellows. Aggrieved persons had the right to appeal to the visitors, and the visitors were to consist of the governor and the council. Obviously, the magistrates had won their point.

Mather and the corporation, however, did not concede defeat. Their hopes rested on the King's expressed wish to be the college visitor and their ability to keep the Council out of that position. To them Crown and governor were preferable to the Council since the former were remote -- at least as far as the Crown was concerned -- and their power restricted by English custom to occasional inspections and appellate jurisdiction, whereas the Council was close at hand and likely to exercise a far closer and more frequent supervision. Protests came strong and fast from several corporation members who complained that they were encumbered in their actions by the demand for written notices of meetings to every corporation member, by the reduction in the number of servants provided for president and corporation, and by the omission of tax privileges the college had enjoyed in the past. The protesters blamed the Council for having put "a peculiar disrespect ...upon some of us." New members had been added to the corporation, and their names preceded those of some of the older members.

> We can't but deeply resent [the protesters complained] the unkindness and disrespect which have been cast upon us by the Council in the affair relating to that society; we must needs be sensible, we have been treated as if we were children rather than men capable to govern a college.

The president, too, had been downgraded. He no longer held a casting vote, and he was made "as insignificant a member of the corporation as the most junior fellow therein..." Mather and the ministers thus trained their guns on the Council and sought ways of excluding it from the post of visitor. On November 9, 1696, they agreed on sending Mather on another charter mission to England. The news of this decision was enough for the Council to panic. As Morison tells it, the members of the Council had "a healthy respect" for the president's "charter procuring abilities at Whitehall." To prevent Mather's departure, they agreed to drop the 1696 draft charter and to invite Mather to prepare yet another draft. The Court then accepted that document, changed it slightly, and had it signed by the governor on June 4, 1697.

That slight change introduced by the Court was to lead to the eventual disallowance of this charter as well. The change again concerned the matter of visitation and replaced the Crown with the Council. In other respects the 1697 charter was not too different from the preceding drafts. It provided for one additional member of the corporation, the Vice-President. He was to take charge of the college at all times when Mather was absent, and the President was to receive a salary only when he resided in the college. Thus Mather gained freedom to remain in Boston and be represented in the yard at least until the charter would be confirmed; thereafter, presumably he would have to move on campus if he was to draw a salary from the corporation. The fellows held their offices for seven years; the corporation's quorum was set at nine, and the president had regained his power to break a tie vote. The puzzling element, of course, was the reassignment of visitatorial power to the governor and Council despite the previous royal disallowance and the corporation's and Mather's known preference for the Crown as visitor. This provision could not have been in Mather's draft. Why did he go along with it? Morison suggests, and rightly, I think, that Mather accepted the designation of the Council as visitors in the expectation that this would lead to renewed disallowance and would brighten his prospects for a return to London to argue his charter preferences directly at the Court. That way he would surely succeed to outplay the Council once and for all! And, as it turned out, he was to be right, even though he accomplished his objective by letter rather than by personal visit. The Assembly passed the charter on June 4 and, in due awareness of Mather's intent, refused his request to be sent as charter advocate to London. While everyone in Massachusetts awaited the Crown's response, Mather was busy with his pen calling the attention of the London officials to what Morison called "the little joker about the visitation." The result then was another royal disallowance.

Thus a renewed try had to be made which, in a curious manner, constituted a step forward aimed at dissolving the stalemate and, at the same time, a move backward to assure another defeat, this time by a gubernatorial veto. The forward step was a compromise which assigned the visitatorial power "to his majesty and his governor or commander-in-chief" -- thus respecting the Crown's wishes -- and allowed Council members on the corporation. Mather here had been forced to back down on his desire to exclude the magistrates altogether from college government. S[illegible] he resisted having to accept them as visitors over whom he wou[illegible] have no control at all, he consented to have five of them as members of the corporation provided -- and this was the backward step -- they were willing to adhere to the

> principles of the Reformation which were espoused and intended by those who first settled this country and

> founded the college, and have hitherto been the profession and practice of the generality of the churches of Christ in New England.

In committee discussions of the General Court it was agreed to add a further clause making even more specific the commitment to religious orthodoxy and uniting corporation and Court on this matter:

> And, whereas the first planters of this country and founders of this college were as to their persuasion in matters of religion such as are known by the name of Congregational or Presbyterian, and the general profession and practice of the churches throughout this land has been and is according thereunto, and the college being intended as a nursery to these churches, it is enacted that no one shall be the President, Vice-President, or a Fellow of said Corporation, but such as shall declare themselves and continue to be of the said persuasion in matters of religion.

Mather, the corporation, and the Court appeared determined to preserve the hold of the Bay Colony churches on the college, a hold [illegible] had first secured in his charter of 1692 when, with the disappearance of the overseers, the corporation as the only governing board had come firmly under the control of ministers. In other respects the 1699 charter was not too different from the 1697 draft. It provided for a president, vice-president, treasurer and fourteen fellows, but was amended to exchange the treasurer for a fifteenth fellow. Two of the fifteen fellows were to be the senior tutors; the rest were non-residents. It was, however, the religious loyalty clause, a gross violation of the English policy of toleration, which led Governor Bellomont to veto the bill. He could not accept the exclusion of Anglicans and others from the corporation, and he ordered the college to continue to govern itself under the 1697 charter. He recommended to the General Court that they petition the Crown for a royal charter.

Troubled by growing religious diversity in the Bay Colony and forced to admit magistrates to the corporation, Mather had introduced the loyalty clause as a compromise solution. Even though it failed, his compromise had appeared workable at first because everyone involved shared a strong desire for a new college charter. The magistrates reluctantly conceded that it was no longer possible to exclude the Crown from visiting, and they found their admission to the corporation a sufficient and perhaps even preferable trade-off. They lost their rights as visitors, but they regained access to the direct government of the college, such as they had enjoyed when they had served as overseers. From their point of view Mather's ministerial monopoly was broken, although they now had to profess allegiance to the Congregational churches before they could be chosen for the corporation. The magistrates, however, supported and even strengthened that demand, most likely because, as Kenneth Murdock has pointed out, they were interested in preserving their authority in the face of the Crown's policy of religious toleration. Mather, on his part, had won his point of royal visitation, and had managed to allow the magistrates back on the corporation only on his terms. In fact, he had managed to make the re-establishment of the Reformation partnership of established church and civil authority conditional on what amounted to a religious test. In his biography of Mather Kenneth Murdock writes that we should not accuse Mather of sectarian illiberalism. One should not blame the trustees of a theological seminary or church college, he sta[illegible] for insisting that officers of their institution had to adhere to t[illegible] creed of their faith. That, however, is hardly the point at issue. Mather's phrase of the college "as a nursery to these Congregational churches" notwithstanding, the college was founded neither as a seminary nor as a church school, but as a college funded and ordered by the General Court for the advancement and perpetuation of learning. Explicit sectarianism did constitute a break with tradition not, however, because of a turn to illiberalism but because of changed conditions. When Massachusetts was peopled and governed by Congregationalists, a demand for Congregational ministers or magistrates would have been superfluous. Now this demand but highlighted the appearance or threatened appearance of members of other denominations among the colony's magistrates. The religious homogeneity of the colony could no longer be taken for granted. Under these conditions trade-offs and compromise were no longer quite sufficient. The 1699 charter failed essentially because of Mather's unwillingness to concede a point to religious diversity and toleration.

With the opening of the new century the battle for orthodoxy and religious homogeneity was lost. Mather gave up the fight and considered turning the college "into a school for academical learning without privilege of conferring degrees..." Such a school would not need a charter. Mather despaired when the General Court accepted Governor Bellomont's suggestion and then, instead of asking for a royal charter, decided to submit another draft of their own in the hope that it might receive royal confirmation. In this draft of 1700 the corporation was defined as consisting of president, vice-president, and fifteen fellows, two of whom were to be the senior tutors. There was no mention of religious requirements for membership, and the visitatorial power was lodged in Crown, governor, and Council. Besides fretting over the absence of a religious test, Mather was also disturbed over the reappearance of that apparently irrepressible demand of visitatorial power for the Council. He could take no comfort either from the change of heart experienced by Governor Bellomont. Pleased that the religious conformity clause had been dropped, the governor now advised the Lords of Trade to give in on the Council's wish to share the visitatorial power:

> I hope your Lordships will gratify them in this point [he wrote] which I humbly conceive is reasonable enough, as it is consonant with the liberty of conscience which the Act of Toleration allows, with his majesty's generous temper and singular moderation, and with the wisdom of the government of England, which I am apt to believe will think it safest and best to cramp these people (as often as they deserve it) in their trade, rather than to abridge or disturb their consciences.

Bellomont saw the council's determination to keep a hand in the college affairs as being prompted primarily by religious considerations, and he fully expected and accepted the Council's determination to defend the congregational orthodoxy of the Bay Colony. Mather, too, saw a religious motive in the council's insistence on visitatorial powers. But he suspected stirrings of Congregational heterodoxy if not of worse aberrations, such as sympathies for Anglicans or Baptists. He was apprehensive that the Council some day might

> consent to have a clause in the college charter expressly declaring that the corporation may if they will choose such to be presidents and fellows as are known to espouse those principles which our fathers came into this land for no other reason but that so they and their posterity might not be corrupted therewith.[57]

Thus while Bellomont assumed that the Council would, if pressed, resist the royal policy of toleration and defend the Congregational orthodoxy of the Bay Colony, yet was ready to face that eventuality when it should arrive, Mather, fearing the opposite and envisaging the Council's capitulation before the Crown, preferred to forego incorporation altogether and to reduce the college to an "academical school." I suspect that Mather's instincts in this case are a better guide to the realities of the situation than Bellomont's estimate of the Council's intent. To the magistrates of the Bay Colony the royal policy of toleration may not have been the overriding factor, but as politicians they saw the impact of religious heterodoxy and heterogeneity, and they knew what that meant. Mather's was going to be a lost cause.

The challenge to the participation of the magistrates in college government having now been defeated, matters approached an anti-climactic denouement. The draft charter of 1700 was sent off to London but was never passed on by the Crown. As far as we know the document was lost somewhere in the channels of the bureaucracy in London. Mather, unwilling as ever to reside in Cambridge, was finally given leave by his Boston congregation to take up station in Cambridge. He did not last long on the campus. He resigned in 1701, and was followed in office by Vice-President Samuel Willard. The college was now governed under a temporary settlement which, for all practical purposes, endorsed the corporation as established under the draft charter of 1700.[58] When Samuel Willard resigned and died in 1707, the corporation elected John Leverett president and, not being sure of its authority under the temporary settlement to authorize such election, submitted the results to the General Court. Here a division arose between the two houses. The Council accepted the election of Leverett, the House refused concurrence. It was then Governor Dudley who proposed a startling resolution: If the lower house would accept the election of Leverett, he and the upper house would resuscitate the old charter of 1650 and declare it to be in force. The lower house could not possibly reject this bargain. It meant that the Crown's representative now acknowledged the colony's right to charter a college! This concession was worth the price of allowing the governor to pick the now reduced membership of the corporation and to have him and the Council again function as overseers. The only ones to lose under this arrangement were the Mathers whose hope for a church-dominated religious school under the protection of a royal visitor was now shattered for good. Angrily, Increase Mather remonstrated with Dudley for having acted contrary to his earlier assertions that the charter had died in 1684.[59] To no avail. On December 6, 1707, both houses of the Court resolved to pay President Leverett's annual salary and to direct the President and Fellows of Harvard College to govern themselves and the college under the provisions of the 1650 charter. This charter, they declared, "has not been repealed or nulled."[60]

To be sure, it made no explicit provision for visitation by Court or Council, but it brought the magistrates back as overseers into the government of the college.

After twenty-two years of what Morison has called "charter-mongering" the college had revived its old consitution. But it would be false to maintain that with the resurrection of the charter of 1650 matters had returned to where they had been in the 1650's Even though de jure Harvard had moved back to the status quo ante of 1650, it had not done so de facto. More nearly it picked up the organization of the college as it had appeared in 1685. The new corporation of 1707 was patterned after that first introduced in 1672. Three of its members were fellows but not tutors, and two were both. In 1707 these men were from forty to eleven years past their own graduation from college and thus presented a picture of experience and responsibility in stark contrast to the impression created by the inexperienced young graduates of the early 1650s. When Governor Dudley, as representative of the Crown, handed Leverett seal, keys, records, and the 1650 charter, then were laid to rest whatever qualms there might have existed over the legitimacy of that document. The college had regained its constitutional standing. But more importantly, in actuality and in law the colony had reaffirmed the principle of joint secular-ecclesiastical college government and had declared its intention to abide with this constitutional arrangement even when the Reformation scheme of cuius regio eius religio could not longer be presumed to either describe Massachusetts society or to prescribe for it.

7. Church and State in Virginia: The College of William and Mary

The College of William and Mary was the second institution of higher learning in the American colonies to be chartered and to open its doors to students. It followed in time, if in little else, the example of Harvard College, and it preceded by less than a decade the opening of the Collegiate School in Connecticut. An Anglican foundation, it received its charter in 1693, a year after Increase Mather's failure to obtain royal approval for a charter for Congregational Harvard. Mather's draft charter had been designed to evade Anglican and royal interference with the college by excluding magistrates altogether from the governing boards and by making no provision for royal visitation. The William and Mary charter, by contrast, provided for a more -- rather than less -- predominantly secular governing board than was the case at either Harvard or Yale. In addition, James Blair, the college president and Anglican commissary in Virginia, played a role quite similar to that of the Vice Chancellors at Oxford and Cambridge. He was supported by the provincial governing board, the members of which also served as visitors. Great care had been taken to assure effective secular control, and it was up to Blair to represent the interests of the Church as much as he could and desired. In 1694 the college welcomed its first grammar school students. For a considerable time it consisted only of the grammar school boys, their master, and an usher. In an English school a writing master taught Indian boys and white children of the neighborhood. It was not before 1729 that the college reached its full complement of teachers called for in the charter, and in that year the period of tutelage officially came to an end. The surviving trustees handed over the property to the college corporation which then consisted of President Blair and the six masters or professors who together constituted the teaching faculty of the school. For William and Mary the stage of development reached in 1729 was roughly equivalent to that attained by Harvard in 1650 and by Yale to be reached in 1745. Each of the three institutions was then governed under its respective charter, had completed its trusteeship period, and was about to enter upon its existence as an academic corporation.

The initiative for the founding of the College of William and Mary had been taken by James Blair who as commissary was the Bishop of London's representative in Virginia. Blair was acutely aware of the shortage of well-trained Episcopal priests in Virginia, and thus he designed college and grammar school primarily as a training ground for the Episcopal ministry. The curriculum of the two institutions was to lead from instruction in the Latin language as the basic prerequisite to a full course in the liberal arts to train students in the skills of logic and mathematics as well as natural philosophy, and finally to professional studies in theology. In his report to Governor Nicholson Blair emphasized that while he negotiated the college matter in London during 1691 he viewed it as an ecclesiastical affair and sought his most effective allies in Court among England's churchmen. The opposition to the project, he wrote, came from the committee for plantations in the King's council, and Blair sought to avoid them as much as possible. His instructions from the Virginia Assembly had directed him to depend for advice principally on the Bishop of London, and Blair's proceedings as well as the opening words of the charter show clearly enough that the main intent of the proponents for the college was "that the Church of Virginia may be furnished with a Seminary of Ministers of the Gospel..."

Despite the religious purpose of the projected college, the instructions given Blair in Virginia suggested that the school be founded in the names of eighteen Virginians who as lay governors of the estate of school and college were to constitute a body corporate. As such they and their successors were to have a common seal, the right to appoint scholars, fellows, and professors, to make and enforce rules and statutes for the college, to fill vacancies in their own ranks, to sue and be sued, to administer gifts and property, and to elect a chancellor. The college corporation was to include _ex officio_ the college president and the first of the two professors of divinity. It is not difficult to see why the clergymen and gentlemen of the Assembly preferred the incorporation of a board of external governors to the incorporation of masters and fellows of a college. There were no masters and fellows anywhere in Virginia in 1691, and it appeared presumptuous and no doubt impolitic to ask for donations and bequests to endow professorships and fellowships for non-existent academics. The members of the Assembly were reluctant to let the funds to be collected for the college slip out of their control into the hands of persons who were likely to be thought of by many as schoolmasters and schoolboys. For their model of academic government they looked therefore to English schools like Shrewsbury, governed originally by the bailiffs and burgesses of the town, or Merchant Taylors', supervised by the company's master and wardens, rather than to the university colleges or the collegiate foundations of Winchester and Eton. A realistic appraisal of their situation must have suggested to them that in its initial stages the new educational venture was going to function more like a school in providing Latin instruction for boys than like a college for the study of the liberal arts and theology. They therefore urged Blair to bring back to Virginia a Latin master, an usher, and a writing master for the teaching of English and arithmetic. Yet intending to hold fast also to their purpose of training candidates for the ministry, the Virginians did not mean to forego their desire for a college. To give substance to that aim they instructed Blair to ask that the governors receive power to elect a chancellor for a seven year term. Having thus combined in their instructions to Blair elements of both a school and a university and directions that would vest virtually all control -- the chancellor's duties were not specified in the instruction -- in the board of governors in Virginia, they advised Blair to "make it your business to peruse the best charters in England whereby free schools and colleges have been founded" and otherwise "proceed according to the best of your judgment and discretion, having always regard to the constitution of this country and government."

Following his instructions and taking counsel with various dignitaries of the Church of England, Blair soon learned that the projected school and college in Virginia presented a problem more complex than first envisaged by the clergymen and gentlemen in the colony. The bishops in England preferred a college chartered by the Crown to a school which in its freedom from royal supervision might turn into a center of dissent. They were suspicious of schoolmasters for they thought them wont, if unsupervised, to indulge their laziness, to arrange matters to their financial advantage, to be unjust to their students, and to use "bad books" in their instructions. Blair, on the other hand, was not enamored of the colleges of the English universities. They were nothing but public halls, he wrote, where students could come and go at their pleasure, and the professors but delivered their lectures. Everything depended on finding reliable professors and placing them under the direction of a trustworthy president. Blair told Governor Nicholson that English bishops and friends of the college had suggested Blair himself for that post:

> ...Though I never sought a place in my whole life time, I could find in my heart to seek this, being well assured that tho (if we could persuade them to go to Virginia) there are many men in England much fitter for it upon the account of learning, prudence and authority, yet perhaps there is none

> to be found that has a greater zeal for the country, or that is more concerned in point of honor to see this work prosper than I am.

Besides his obvious acquaintance with the needs of Virginia and his conviction of the inappropiateness of the English college model for the New World Blair brought with him as qualficatious for the post of college president his experience as student at Marischal College, Aberdeen, and as a graduate of the University of Edinburgh at which he had earned a master's degree.

Both Marischal and Edinburgh were institutions founded initially as colleges with no explicit connections to a pre-existing university. In the case of Marischal, its relationship to King's College, Aberdeen, was opaque at best. The two colleges, chartered in 1495 and 1593, respectively, were rivals, and yet at times they cooperated. Marischal, the younger of the two, suffered from an identity problem. Perhaps we do best to quote Professor Henderson's description of the matter:

> The Marischal College constitution is so worded in the Charter that doubts are inevitable as to whether it was meant to be a self-contained university in full status, or a constituent college along with King's College within the University of Aberdeen, or a schola illustris,neither claiming to be a university nor claiming connection with King's. All three views have been held.

> Latterly Marischal College itself preferred the first view, King's College the third, and outside opinion the second...

The very confusion and opaqueness of Marischal's status may well have proved helpful to Blair. In it he could see a possible precedent for the new college-to-be in Virginia. Marischal shared with all Scottish colleges the function of providing endowment support for a president, the members of the teaching faculty, and for a number of students. With financial and educational independence thus assured for Marischal and with its charter enumerating such university officers as chancellor, rector, dean of faculties and granting the college the right to give degrees in the Faculty of Arts, it becomes easy to see why Marischal claimed university status. What Blair could have learned from Marischal was that the functions, privileges, and responsibilities of a university and of a college could well be telescoped, and that with such joined characteristics a new instiuution at the edge of civilization might be better able to deal with the problems of discipline anticipated and feared by Blair and the English bishops. There still remained the question of the bishops' distrust of the college as a school, and the need for Blair to assuage their uneasiness about the potential threat of such a school turning into a dissenting academy.

Here the example of Edinburgh may have proved helpful. In that city a college was created by a royal grant to the City Council in 1582. From an administrative point of view, the college was a city school. It did not have the university office of chancellor, and it had fused the office of rector and principal into one. But from the very beginning the school had granted degrees in the arts faculty. By the end of the seventeenth century Edinburgh appeared as "essentially an arts college with a divinity school attached," governed by the City Council of Edinburgh, and possessing on paper all the rights and privileges of a college. In time it would claim to be a full-fledged university. For Blair Edinburgh could prove the case of an institution which was begun as a school and yet had been given the means of growing into a college and even a university. It was an institution under the firm control of a local political body, and yet it had come to claim equality in reputation among the colleges and the universities of the Protestant countries.

His Scottish experience, particularly his familiarity with the governance of the College of Edinburgh, stood Blair in good stead when answering the fears of his partners in the London negotiations. A school under the jealous oversight of a municipal or provincial council was not likely to break loose from control and turn into a seedbed of dissenters unless, of course, the entire province or colony was to follow that path. Such secular oversight combined with a trusted president under the authority of a chancellor in London answered Blair's own misgivings as much as those of the London clergymen and royal officials. At the same time the combination of ecclesiastics in the offices of president and chancellor and among the trustees in Virginia together with the predominantly lay board of colonial trustees and governors fulfilled the requirements of joint secular and ecclesiastic control.

As it finally emerged in 1693 the charter constituted a curious blend of elements from English universities and Scottish colleges made to fit the conditions of the New World. When Blair returned to Virginia bringing back with him a schoolmaster for the Latin school only he did then not have a body of fellows or masters which could form the nucleus of a teaching faculty. Willy, nilly, he had to rely on the eighteen Virginians named in the charter as the college governors and visitors to perform those offices in their capacity as a board of trustees for the school. As soon as the full complement of president and six masters or professors was to have arrived in Virginia and could be formally recognized as the college corporation, the eighteen trustees or those still surviving were to relinquish their trust but not their offices as governors and visitors. The surviving trustees would hand over the property to the new corporation, and this corporation together with the successors to the original eighteen governors would then govern and oversee the college. During the period of trusteeship the college was to be kept in the status of a school or of an assemblage of schools under the control of an external governing board. The charter also encouraged the newly founded institution to aspire to university status. It provided for such traditional university offices as rector and chancellor, and for the election by the corporation of a representative to the Virginia House of Burgesses. With the grant of that privilege, the College of William and Mary had been recognized by the Crown as a civil corporation like the two universities in England.

But again, this is not the full story. A master or fellow of an English college might have been alarmed to notice that the Virginia visitors not only received the right to make the original college statutes and to elect the original members of the college corporation as well as their own successors, but that they and their successors also were given power to alter and add to the existing statutes, to continue to elect members of the corporation and candidates for the offices of rector and chancellor. These provisions effectively curtailed the traditional powers of an English college corporation and placed them into the hands of the board of visitors. The resulting arrangements resembled those in Edinburgh rather than in Oxford or Cambridge, particularly when we consider the functions of the rector. In Edinburgh, as in William and Mary, the rector was no longer the elected representative of the student body and the faculty, but he had become the spokesman for the board of control -- the City Council in Edinburgh, the visitors in Virginia. Whether we ascribe these deviations from the traditional English university model to the colonists' distrust of clergymen-professors, to their realistic appraisal of the abilities of "schoolmasters" who needed close, on-the-spot supervision, to Blair's possible personal preference for the Edinburgh example, or to the more recent English practice of centralizing power in the heads of colleges and in the Vice Chancellor, may remain and may have to remain idle speculation. But it is of some moment to understand and to appreciate the nature of the transformation undergone by an English college in its transplantation to the New World. Local external control, mindful of the social and political needs and circumstances of a new country, placed a check on the exercise and maintenance of tradition and privilege. By shifting so much power from the college corporation to the board of visitors and giving the board a direct hand in the governing of the corporation, the college, in comparison with the colleges of Oxford and Cambridge, had lost a high degree of its autonomy and become far more subject to outside control.

Very little is said in the statutes of the faculty besides reminding them of their duty to carry out the educational design of the founders and besides enumerating the four schools in which they were to teach: The Grammar School, the Philosophy School, the Divinity School, and the Indian School. These schools were ranked in something of an hierarchical order, as is indicated by the salaries paid their masters and the ranks assigned to them. Masters and president were held responsible for the daily government of the college, and the masters could participate in the election of college officials, such as usher, writing master, bursar, librarian, janitor, cook, butler, gardener, workmen, bailiffs and overseers, yet "in lesser matters" the President alone could act. He was, in fact, the "supervisor of the rest." His power derived from the Senate; he must attend the senate meetings to report on developments in the college, and if he disagreed with his faculty on important matters he must ask for the decision of the governors. Again it is clear that the College of William and Mary was not to be governed by its corporation but by its Senate consisting of non-resident lay men. The one person who belonged to both worlds was the college president. On his actions it would depend ultimately whether the college faculty could maintain its own authority as members of the college corporation against the power of the governors assembled in the Senate.

From this description of the proceedings during the period of the college founding and from this analysis of the early documents it becomes apparent that the college owed almost everything to the labor and vision of one man, James Blair. In this respect the College of William and Mary differed markedly from its Puritan rivals in the North. Neither Harvard College nor the Collegiate School were the creations of one single individual. As schools of and for dissenters they had to rely and draw on the resources of their Puritan colonies, their secular governments and their Calvinist churches. In Virginia, however, a different situation obtained. James Blair could ask for aid from the mother country, could rely on his own academic experience in Scotland, and could depend on the Virginia gentry. Above all, he relied upon himself, and almost single-handedly not only created but also guided the college through its first half-century. In the literal meaning of the term as used in the English universities and figuratively as well, Blair was the head of the college. As such he enjoyed the confidence of the chancellor at the court in London, and as life-long president he ruled over the masters. He steered the college through the years of its trusteeship and, on February 27, 1729, as one of the two surviving trustees, he handed the college over to the corporation. More yet, he had also been designated a life-long member of the visitors and had been selected as their first rector. When he passed away in 1743 he had held at one time or another all of the important administrative offices of the college. His career reflected the centralization of governmental powers in the college heads and in the Vice-Chancellors that had been introduced at Cambridge with the Elizabethan statutes of 1570 and at Oxford with the Caroline statutes of 1628 and 1631. Distrustful of the capacity of masters to rule themselves and their scholars in a disciplined fashion Blair had imported variations on these English models into his charter proposal, and had supplemented these with provisions for lay government on the Scottish model. Blair evidently knew what he was doing. His college survived and prospered, and his success was acknowledged by his contemporaries and early successors:

> We know that during the life of that pious and learned man Mr. Blair whom we look upon as the Father of the College, the affairs of it were conducted under this charter, such as it is, with dignity and honor to himself, and much to the

> satisfaction and advantage of the colony in general.

Thus reported the visitors to the chancellor in 1768. The College of William and Mary was a monument ot the persistence and devotion of James Blair.

But this was not all. Blair was keenly aware also that the College of William and Mary was not an integral part of one of the English universities. Not unlike the colleges of Scotland and Trinity College in Dublin, Ireland, it lay isolated and alone in a foreign province. It could not sustain itself on English tradition alone. It needed native support, protection, and direction. Using his instructions by the Virginia Assembly as a point of departure Blair asked for and received charter authorization not only for the initial eighteen Virginia trustees, but also for their continuance as governors and visitors after the establishment of the college corporation. For this departure from English practice he could fall back on his own knowledge of the government of the College of Edinburgh. He could also have observed a similar arrangement among the Puritans in Massachusetts. In both colonies the need for assuring the support of local authorities, civil or ecclesiastic, subordinated the corporate academic organization of the faculty to supervision and control by nonresident authorities. While the visitors in Virginia closely followed the example of Edinburgh, the overseers in Massachusetts found their counterpart among the inspectores of continental Reformed universities. In both colonies similar circumstances led to similar solutions. The governing practices of Reformed universities in Europe, the inexperience or absence of academic personnel, and the scarcity of funds in the New World combined to bring both state and church into the government of the colleges.

8. Academic Government by Ministers: Connecticut's Collegiate School, 1701 - 1745.

In Connecticut a collegiate school was chartered by the provincial General Court when Harvard College was still embroiled in charter-mongering and William and Mary had garnered its prize from the Crown a mere eight years ago. The governing arrangements of the school, however, differed from those of its northern and southern neighbors. Its board of trustees consisted exclusively of ministers of the colony's churches. There were no magistrates among them. How had this come about? The first initiatives had been taken when a group of congregational ministers sought authorization from the General Court to open and direct a collegiate school to fit youth "for public employment both in church and civil state." The ministers were troubled over the expense of a Harvard education for their young men and over the remoteness of Harvard College from the centers of population in Connecticut. They also were disturbed over the charter difficulties encountered by that college during the 1690's,and they were somewhat unsure over the religious orthodoxy of their brethren in the Bay Colony. They consulted with each other and several Connecticut and Massachusetts men whose opinions they valued and whose advice they sought. Chief among these consultants in Massachusetts who responded in September, 1701, was Increase Mather, the recently dismissed ex-President of Harvard College. Mather, still smarting from the defeat of his attempts to remove the magistrates from among the overseers or to assure their religious orthodoxy by a loyalty oath, resurrected his 1692 charter plans and counselled his Connecticut correspondents to arrange for the government of their projected school by external inspectors who, preferably, should all be ministers of neighboring churches. Financial support, Mather suggested, might be secured from the churches of the civil government. Mather's pointed omission of references to the participation of magistrates in the college government was favorably received. New Englanders were aware that Parliament was considering annulment of the charters of all the New England colonies and feared that, should this occur, the planned school could only suffer from too close a link with the colony's government. Thus they allowed the initiative for creating an academic establishment to lie with ministers and not, as had been the case in Massachusetts, with the General Assembly. The Collegiate School came under the exclusive tutelage of the colony's churches with the General Assembly's role restricted to the grant of legal authorization and of funds for the erecting and maintaining of the school. The customary cooperation of magistrates and ministers in the direct governing of a provincial school was discarded in order better to insure the ability of church and commonwealth to continue assuming financial sponsorship of and responsibility for their collegiate school.

Legal advice from corraspondents in Connecticut, while divergent in many ways, on the whole did not favor the incorporation of the planned school. Gershow Bulkley, physician, lawyer, and politician of Wethersfield, told "the reverend elders deliberating of a college" that they as dissenters could apply for the protection of the 1689 Act of Toleration against possible actions taken against them under previous statutes barring non-conformists from teaching. He did not express himself on the possibility of founding an unincorporated "school of learning" or "free school," but concluded that the General Court should not go ahead on its own with the incorporation of a college since "we all know that the King and Parliament are above us..." Rather, Bulkley felt, the Court should apply for a charter to King and Parliament. Dissent from this advice came from Eleazar Kimberley, the colony's secretary, and John Eliot, lawyer and politician of Windsor. They pointed out that Bulkley's opinion was grounded on the mistaken assumption that the statutes of England and the acts of Parliament were all in force in the colonies. This, they said, was true only of those statutes in which the plantations were specifically named. Besides, added Kimberley, the current sovereigns were known to promote literature and learning and had not raised any questions about the legal status of Harvard College in Massachusetts. In addition, Eliot pointed out, colonial governments had created quasi-corporations to dispose of land in New York and Massachusetts, and these incorporated entities had not been questioned by the Crown. Kimberley and Eliot thus implied that the Massachusetts precedent warranted incorporation of a college in Connecticut by the Connecticut General Court. They refrained, however, from pressing their point, counselled caution, and Kimberley modestly deferred to the greater wisdom of Mr. Bulkley. All in all, enthusiasm for incorporation was muted at best.

Those who like Kimberley and Eliot nonetheless wanted to explore the feasibility of incorporating the school were met by legal uncertainties. The question they faced was whether English law prohibited the incorporation of a college in the plantations unless a charter were issued by Crown and Parliament, or whether no such requirement restrained the colonial legislatures? Demonstrable precedents uncontradicted by conflicting evidence were lacking. Under these circumstances it is not difficult to see why the colonists hesitated and refrained from incorporating the school [illegible] their own authority.

But even this was not all. Arguments resting on the 1650 incorporation of Harvard College and on the creation in Massachusetts and Connecticut of quasi-corporations were less than compelling. While Harvard's charter of 1650 had indeed been uncontested, in 1701 the college's legal status was by no means certain, and the inability of the Massachusetts authorities to draft a charter acceptable to the Crown had made for much uneasiness. Furthermore, quasi-corporations in New York and Massachusetts suffered from the defect that these societies, while exercising many of the prerogatives of corporations, were in fact not fully and formally incorporated. This was true of municipalities, counties, towns, religious societies, and charitable foundations as well. In Massachusetts and Connecticut the so-called incorporation of towns meant not much more than to define geographical limits, specify a name, and authorize the owners to govern themselves. Connecticut had authorized religious societies with certain privileges of corporations, but here, too, the earmarks of complete legal incorporation were missing. It would seem, then, that neither Harvard College nor the various quai-corporations could supply uncontrovertable proof that Connecticut's General Assembly had the right to incorporate a college.

There remained the possibility of establishing the projected school as a trust under the Statute of Charitable Uses. Here the planners faced the question whether such arrangement would bring the school under the supervising authority of royal commissioners as provided for in the statute, or whether the colony's General Court as highest court of equity could serve as visitor. The answer depended on the applicability of the 1601 statute to the colonies. As we know, our advisors hesitated to declare openly their belief in the inapplicability of the English statutes, yet they proceeded to act as though it were a settled matter that the colony's General Court held full authority to authorize and supervise public charities. John Eliot recommended most directly the establishment of the school as a charitable trust. Under his proposal neither the trustees nor the governors -- if they were to be distinct from the trustees -- needed to be incorporated. The trusteeship alone would safeguard the property and the permanency of the institution in much the same way that Harvard's existence and funds had been protected as a trust in the years before 1650. The case for the proposed college as a charitable trust was strong inherently and by virtue of the Harvard precedent.

The anxieties concerning the permanency of the colony's chartered government and the uncertainties over the school's legal status also inclined the planners to reject John Eliot's proposal to apply for the university privilege of sending two delegates to the Connecticut General Assembly. Eliot had based his suggestion on the practice of the English and Irish universities of sending delegates to the House of Commons. But his colleagues demurred and refrained from incorporating such provision in the charter of the Collegiate School. Perhaps they also were aware that, had they done so, they would have arrogated to themselves a privilege exercised theretofore only by the Crown.

Finally, caution and the desire to avoid attracting royal attention also persuaded the ministers to omit reference to the subject of visitation. "All human societies standing in need of a check upon them," Judge Sewall and Secretary Isaac Addington had written from Massachusetts, "but we knew not how to call or qualify it, but that in a little time it might probably prove subversive of your design." To ask the English authorities, either Crown, Parliament, or royal charity commissioners, to appoint or act as visitors would only serve to bring the projected school to the attention of London. To embody in the charter a provision for visitation by Connecticut authorities might be an even greater mistake. In 1701 the Connecticut planners knew that twice within the last five years the Crown had rejected a new charter for Harvard College because these charter drafts had not provided for visitation acceptable tot the Privy Council. As long as Harvard's fate was unresolved and that of Connecticut in doubt, caution and wisdom counselled to consider well the advice of Sewall and Addington who had accompanied their draft proposal of the charter with the note:

> We on purpose gave your academy as low a name as we could, that it might the better stand in wind and weather, not daring to incorporate it, least it should be liable to be served with a writ of quo warranto.

Thus when the draft charter was presented to the October session of the Connecticut General Assembly in 1701 it contained no provision for involving representatives of the secular authorities in the college government, for incorporation of the school by either Crown, Parliament, or General Assembly, for university privileges, or for visitation by anyone. It proposed in as inconspicuous a manner as possible the establishement of a collegiate school by legislative authorization. In omitting all reference to the participation of magistrates in the school's government, it differed markedly from previous practice in Reformed institutions both in Europe and in the American colonies.

The exclusion of the magistrates from the governing board of the Collegiate School was in time to become a source of prolonged quarrels which continued intermittently throughout the eighteenth century. Innovation extracted its price. While it may have prevented the always dreaded confrontation with the Crown, it opened the door for disputes between the trustees and the General Assembly. But even more troublesome was going to be the absence of an undisputable answer to the question of who were to be considered as the school's founders? In its preamble the charter spoke of "several well disposed and public spirited persons" who had petitioned the Assembly to grant "full liberty and privilege...unto certain undertakers for the founding, suitably endowing and ordering a Collegiate School..." From this working it is not clear whether the "public spirited persons" were identical with the "certain undertakers," but it seems likely that they were not. The Assembly recognized ten ministers as these undertakers, called them trustees or partners, and authorized them to erect and form the school and to manage the funds that were to be received for its use. The charter gives no clue to the identity of the school's founder. In English law, "the first gift of the revenues is called the foundation, and he who gives it is the founder in law..." But the only references to funding are to "moneys or any other estate which shall be granted by this Court or otherwise contributed," to £ 120 in country pay which the Court obliged itself to pay annually until it would decide otherwise, and to lands, tenements, hereditaments, goods, chattels, and sums of money "as have heretofore already been granted, bestowed, bequeathed, or given" or shall be so in the future. From this it may be argued that the General Court itself was the school's founder on account of the £ 120 in country pay, or that it was James Fitch who on October 16 offered glass, nails, and a farm. Whether or not Fitch's offer constituted the "goods" mentioned in the charter as already having been given cannot be determined, since we do not know on which day of the October session the charter was passed. The entire matter, therefore, of the school's founder or founders remains obscure.

What appears from the record, however, is that the ten ministers functioned as trustees of the school's property and constituted in law an unincorporated trusteeship. As such they resembled the Harvard overseers of the years from 1642 to 1650 and the trustees of the College of William and Mary at that time. As the charter empowered them or their majority to manage the school after its erection and to replenish their number so as to always consist of no less than seven and no more than eleven, the Connecticut trustees, not unlike the Harvard overseers of 1642, conducted their business as a quasi-corporation. The charter, however, called them partners and, by implication, permitted each partner to conduct the partnership's business on his own and to oblige and commit the partners to his decisions. Such policy conflicted with the requirements of a quasi-corporation for majority approval. In time, this conflict between partnership and corporate proceedings would become a major issue threatening the trustees' ability to preserve the school and to keep it from disintegration. In 1701 the issue, if perceived at all, remained in ambiguity and, together with the lacking definition of the school's founders, provided latent occasion for future trouble.

What brought to a head the question of trustees' status as partners or as members of a quasi-corporation was the controversy which arose in 1715 over the school's location. Since the beginnings in 1701 the students had been taught at various times at Killingsworth, Milford, and Saybrook. When in October 1715 the General Assembly voted to grant £ 500 to the school for the construction of a house, existing dissatisfaction with the Saybrook site combined with the Assembly's offer prompted interest in a possible change of location. The initiative was taken by the two Hartford trustees, Timothy Woodbridge and Thomas Buckingham who together with a number of other Hartford residents petitioned the Assembly for assistance in establishing the collegiate school in their home town. Doing this Woodbridge and Buckingham ignored and circumvented their fellow trustees. Samuel Johnson, then a tutor at the collegiate school, thought the petition and the way it had been presented "unaccountable..., strange and irregular," and remarked that it "caused a mighty commotion in the Assembly and great concern." The Assembly, however, seemed to see nothing irregular in the matter. It received and acknowledged the petition, and then summoned the trustees of the collegiate school to appear before them at an early date. In the ensuing controversy Woodbridge and Buckingham and four other trustees agreed to meet with the assembly, while three others stayed away. Of the six who participated in the conference, four spoke out against the petition of their Hartford colleagues. The arbitrary action on the part of Woodbridge and Buckingham, the Assembly's readiness to respond, and the four trustees' willingness to let the Assembly play a role in their deliberations brought into focus the unresolved question whether the trustees constituted a quasi-corporation or a partnership.

Messrs. Woodbridge and Buckingham had based their actions on the assumption that the trustees constituted a partnership. As partners the two Hartford trustees exercised their citizen's right to petition the legislature, and the Assembly, in turn, responded by using their legislative power to investigate matters brought to their attention. The Assembly thus called on the trustees to meet with one of its committees. When, at that meeting, four of the six participating trustees agreed to have the Assembly "nominate" a location for the school unless at their next meeting the trustees came to unanimous agreement, these four trustees evidenced their belief that the trustees constituted a partnership which, in critical decisions, required the unanimous consent of all its members. Those in opposition to this view who saw the trustees as a quasi-corporation protested the petition of Woodbridge and Buckingham as a violation of their corporate responsibilities which required that, before action was taken affecting the welfare of the trusteeship, a majority of the members be consulted and given the opportunity to endorse or reject the proposal. They also objected to the Assembly's call to a meeting as an unwarranted interference in their business and, not being allowed for in the charter, of doubtful legality. In this form emerged a sharp juxtaposition of the arguments for partnership and for quasi-corporation.

Additional arguments referring to the charter and by-law provisions for quorum and voting strength entered the picture, but the main question remained the trustees' claimed independence of the Assembly. In time the upper house came to the support of the majority trustees in their refusal to submit the site question to the Assembly. The trustees themselves, playing on the Assembly's fears of having their actions scrutinized by Parliament, resorted to hard-hitting arguments:

> Let none desire the Assembly to do that to their grantees which they would not others should do to them, viz. destroy their charters and charter privileges.

What the Assembly threatened to do, argued the trustees,

> is contrary to the law of all societies, it is contrary to the common law of England, and directly contrary to the 33 Hen. cap. 27 which says that the act of the more part of every college or corporation within the realm and in every place shall bind, though any should have sworn to the contrary, that all may act in one conformity of reason.

This, no doubt, was the trustees' most potent argument, though for some time yet it failed to persuade the parties to come to terms. When agreement was finally reached the Assembly accepted New Haven as the new site for the college. There was, as tutor Johnson wrote, "great throws and pangs and controversy and mighty strugglings," before the Assembly voted for New Haven. The Hartford trustees, said Johnson, "had their will in having the school settled by the General Court, though sorely against their will at New Haven ..." The Lower House and the Hartford trustees lost out on the site, and the Upper House and the majority trustees had to accept the fact that the General Court had intervened in the trustees' business. While the site controversy continued to fester for several years, the legal and constitutional questions appeared to have been settled for the moment. As tutor Johnson rightly observed, there had been no clear-cut victory for either party.

It remains for us to take one more look at the legal and constitutional issues involved. There is, first of all, the question of the legal nature of the trusteeship. Were the trustees to be looked upon as a corporation, a quasi-corporation, or a partnership? It is clear that lacking a formal charter of incorporation they were not a corporation. But could the trustees be considered a quasi-corporation entitled to regulate their affairs in a manner customarily adopted by a corporation? The Hartford trustees did not think so and had by their actions treated their fellow trustees as partners. In this attitude they were confirmed by the lower house which, according to a memorandum written by trustee Moses Noyes, had held that the trustees' charter "makes them partners, not one body politic." But the lower house was not very sure of its position. The members felt it necessary to list reasons for their disagreement with the majority trustees and the upper house "supposing the trustees were incorporated."

Their contention that the trustees constituted a partnership appears neither persuasive nor convincing. An anonymous author then had stated a much stronger case for the trustees as a quasi-corporation:

> Allowing the trustees to be considered as partners we see clearly that our own laws have provided that they shall govern by their majorities as towns, proprietors, owners of ships. Now these are not bodies corporate yet as the Common Law allows are as it were incorporate to do some things without which they could not well manage.

As a quasi-corporation the trustees could well have been considered partners whose association nonetheless allowed them to conduct their business by majority vote. Nothing in the eighteenth century would prohibit such understanding.

The second question that deserves attention refers to the relation of the trustees to the colony's General Assembly. In the long run this issue came to be much more significant than the nature of the trusteeship, and it was to figure prominently in later disputes. The Hartford trustees had acknowledged readily that the Court had authorized the erection of the school and had contributed funds for that purpose. They also admitted that the school continued to depend on tax money. For these reasons they were inclined to let the Assembly have a say in the school's affairs, particularly when, in the site controversy, the trustees could not reach agreement. The majority trustees acknowledged the reasons given by their Hartford colleagues, but they did not come to the same conclusion. They insisted on the chartered rights of the trustees to self-government and, in doing so, compared their partnership to a body politic. With this they overstated their case, but they nonetheless had legitimately raised the question to what extent the General Assembly as highest court of equity could exercise oversight over the actions of the trustees. Given the specific cause of complaint, the majority trustees felt that with a quorum having attended all of their meetings neither charter nor by-laws specified unanimity in "furnishing" the school. There was thus no cause for legislative intervention. The Hartford trustees felt otherwise. In 1717 this issue remained unresolved. It would in due course arise again and demand clarification. But it should also be pointed out that the dispute of 1717 was the exception to an otherwise untroubled relationship between college and Assembly. The trustees had been able to govern the college without interference, and the Assembly had supported the college generously with regular annual grants and occasional special contributions. As Richard Warch remarked, the trustees were in control of a school which had been publicly supported for the most part.

One thing had become crystal clear: The settlement of the site controversy had not resolved the question of the school's legal status and of the trustees' relationship to the Assembly. On the first issue it does not really help to state in retrospect, as we have done, that the trustees were partners associated with each other in a quasi-corporation. This merely describes a situation in which mutually contradictory elements were joined in an uneasy union. As if to bring home this assertion, the procedural questions of decision making continued to haunt the trustees. After the animosities of the strife over the location subsided, the school, now named Yale College in honor of its benefactor in England, was thrown in renewed turmoil when in 1722 its rector, Timothy Cutler, defected to the Anglican faith. The trustees were now obliged again to look for someone to preside over the school. They found it difficult to discover qualified candidates and to agree among themselves "concerning the rule of our practice" of arriving at decisions. The conditions laid down in their by-laws proved cumbersome, and the charter left several questions open to debate. In their quandary the trustees turned to the General Assembly in 1723 with a request that it "resolve" these matters. The assembly ruled that the trustees could replace incapacitated members by majority vote, declared seven members to be a quorum and the majority of any meeting attended by a quorum to be capable of making valid decisions. Unanimity, in short, was not required. The assembly also reduced the age requirement of trustees from forty to thirty, and provided that the school's rector always be a trustee during the period of his rectorate. The act of 1723, legitimatizing decisions by majority vote and voiding the by-law provision requiring the assent of absent members, thus strengthened the trustees by underlining their corporate voting procedures and also weakened them by altering their by-laws. While it was helpful in answering the immediate questions, it still left in doubt the larger issue of the school's legal status.

The Assembly's relation to the school was to become an issue again in an indirect manner in 1728 when Rector Elisha Williams suggested that the trustees apply for a royal charter. Connecticut's Episcopalians by then had successfully challenged the colony's ecclesiastical establishement and had obtained for themselves the right to have the church tax of their members paid to them directly rather than to the established congregational churches. Williams hoped they would not get word of his project because, he wrote, "our bigotted churchmen would endeavour all ways possible to defeat it."

Nothing appears to have come of Rector Williams' suggestion, perhaps because the trustees hesitated to apply for a royal college charter. Such a charter, if applied for and granted, might have constituted a threat to the Connecticut establishment of General Assembly and congregational churches. It would have superseded the charter issued by the General Assembly and, coming from the Crown as protector of the Anglican Ch8rch, would surely neither have allowed the continuation of an exclusively ministerial board of trustees nor accepted the proposition, then held in the colony, that in all religious and ecclesiastical matters the Collegiate School was to be guided by the Saybrook Platform of the Connecticut congregational churches. A royal charter also would have included a provision for royal visitation. In short, it would have brought to an abrupt end the hegemony of the ministers over the collegiate school. That Rector Williams nonetheless was willing to run this risk shows well how important he deemed it that Yale College be placed on secure legal ground, above the uncertainties of the partnership arrangement, above the vicissitudes of the jurisdictional disputes between trustees and assembly, and above the growing power struggle between the Connecticut congregational establishement and the Anglican church. Potent as were the reasons for not petitioning the Crown for a charter, in Williams mind, at least, the needs for clarification of the school's legal status and for giving it all the protection to be had from royal incorporation were paramount.

Williams' way of weighing the issues, however,did not prevail. Under his successor Thomas Clap the trustees were finally incorporated in 1745 as The President and Fellows of Yale College. The charter of incorporation, however, did not come from the Crown, but was issued by the Governor and Company of his Majesty's Colony of Connecticut. It transformed the trustees into fellows, but in 1745, just as in 1701, all of them were ministers of Connecticut churches. As a corporation the president and fellows were now presumably protected from the Assembly's interference in their business. But the charter also made it clear that the Assembly had the right, "as often as required" to inspect the college laws, rules, and ordinances, and to repeal or disallow them 'when they shall think proper." The charter thus upheld the ultimate authority of the Assembly over the school, but also guaranteed the school's autonomy within the limits set down by the charter. It clearly was intended to clarify the issues that had arisen in the past. It also reaffirmed the original intention of the ministerial planners of 1701 to assure protection to the established religion while keeping the secular authorities out of the direct governance of the college as much as possible. In 1745 this intent was upheld. Its testing was to come in the future.

9. An Eighteenth Century Crisis of College Government: Harvard in the 1720s.

During the first half of the eighteenth century the Reformation order of college governance entered a crisis stage. The decisive events leading to a shift of control from the clergy to the civil authorities took place at different times throughout the century. At Harvard they occurred in the 1720s, at William and Mary in the 1750s, and at Yale between the 1760s and the 1790s. At the Massachusetts college the crisis consisted of an attempt by the resident tutors to gain full membership on the college corporation. It was initiated, as it were, by the attack of a graduate who sought to deny the corporation's authority to withhold from him his second degree. In the context of previous events the upheaval brought on by the tutors appears as but another attempt to break the college loose from the Reformation pattern of governance by outsiders and to enhance the authority and autonomy of officers closest to and most directly involved in the college's daily affairs. It fits in with the corporation's desire formally recognized in the charter addendum of 1672 to keep its control over the college finances and to obtain a limited amount of civil jurisdiction over the students. It also is of a piece with the unsuccessful attempt of Increase Mather in 1692 to exclude the magistrates altogether from college government and, in 1699, to permit their participation only on condition of taking a religious test-oath. In each case the tendency was to draw greater power into the hands of those immediately concerned with administration, teaching, and discipline, and to keep at arm's length those more remotely involved, be they overseers, magistrates, or, as in the 1720's, the non-resident fellows.

While in the seventeenth century this desire had been expressed by members of the corporation, in the eighteenth it became the concern of the tutors. Several circumstances helped to add urgency and force to their quest. Under Leverett's reign the student body began to expand in size and to manifest a growing diversity in the students' background and purpose. While before 1719 the graduating classes in the eighteenth century had never exceeded twenty, in that year it reached twenty-three, and by 1723 it had climbed to forty-three. Growing numbers brought different motivations and behavior patterns. "The new crop of young men came to be made gentlemen, not to study," wrote Morison, and as a result discipline soon came to be a troublesome issue. As if to underscore the novel type of student now inhabiting the college, there was President Leverett himself as a representative of a new type of college president. His experience as politician, statesman, lawyer, and judge brought a different outlook into a presidency which, until then, had always been the province of outstanding ministers. With his immersion in the colony's and Boston's secular life Leverett was destined to offend, sooner or later, traditionalists within and without the college. Being attuned to the interests and concerns of Boston's rising commercial elite and having participated intimately in the affairs of state, he understood and felt some sympathy for the community's growing taste for diversity, toleration, and secular pursuits. His own religious conviction placed him with the liberal faction of the colony's congregational churches, and it made him look with tolerance on the Anglican leanings of Boston's business community. This community's guiding principles, as Bernard Bailyn said, "were not social stability, order, and the discipline of the senses, but mobility, growth, and the enjoyment of life." Leverett understood even if, as a Puritan, he could not condone the new values. He also knew that economically the college depended for its survival on Boston's wealth, and he saw reasons enough to forego a deferential submission to the complaints of orthodox Puritans. If, then, the tutors were unhappy with the day-to-day problems of discipline created by the new students and with the President's reluctance to support them in their request for greater authority, they found it easy to blame their unhappiness on the activities and sentiments of outsiders who, in the tutors' views, wielded their authority in blissful ignorance of the consequences. The tutors, in short, resented outside interference in their work, and opted for the abolition of a non-resident corporation.

Relations between the tutors and President Leverett had become strained by 1716 when the corporation had limited the tenure of tutors to three-year terms. In 1718, in a tangentially related matter, an attack on the college made evident once more the triadic establishment of college, commonwealth, and church. Ebenezer Pierpont, schoolmaster at Roxbury and 1715 graduate of the college, had complained bitterly of tutor Sever's intransigence in denying Pierpont's students admittance to the college, and in this fracas Leverett rushed to Sever's defense. He denied Pierpont his second degree for "his condenmning, reproaching and insulting the government of the college." Pierpont immediately protested this decision to Governor Shute and informed Leverett of the governor's "order" to meet with him and the corporation on the Monday following commencement day. On commencement day itself Pierpont appeared before the corporation and, in what Leverett described as a "long and impertinent" talk, repeated his accusations against Sever and the college. The corporation, however, refused to be moved and upheld Leverett's decision to withhold the degree. When informed of the verdict, Governor Shute's comment, "Well, there is an end of it, and no more to be said," indicated that the Monday meeting was off and the affair settled. That, however, proved to be too hasty a conclusion. Pierpont now brought suit against Sever in Middlesex County Court in Charlestown. The corporation deemed this step to be fraught with danger and "hurtful to the rights and privileges of the college." They requested a joint meeting with the overseers and, behind the scenes, looked for some sort of accommodation with ex-Governor Joseph Dudley and his son, Attorney-General Paul Dudley. The Dudleys were known as influential with the orthodox churchmen, and the corporation suspected them to be among Leverett's greatest detractors. They also asked Governor Shute to delay the case in the Charlestown Court until the corporation and the overseers had met.

What was underfoot was no less than an all-out effort to rally the combined resources of magistrates, churchmen, and judges around the embattled Sever regardless of the merits of the case and of the personal feelings of the protagonists. The suit against Sever was perceived as an attack against the Bay Colony's established authorities of college, church, and commonwealth, and an attempt was being made to turn it back at all cost.

As matters now developed it soon became evident that Pierpont and the orthodox party were about to challenge the entire liberal establishment of the Bay Colony. The occasion was the meeting of corporation and overseers on October 31. Governor Shute was in the chair. Both Sever and Pierpont were asked to state their respective case, and it became evident quickly that different persons listened with different expectations. Leverett, mindful of the necessity of supporting his tutor, characterized Pierpont's statement as impudent, impertinent, and confused. By contrast, he spoke of Sever's presentation as plain, modest, and honest. Pierpont's sympathizers found their spokesman in Attorney-General Paul Dudley who, according to Leverett's somewhat jaundiced view, "gave himself great liberty to patronize Pierpont, and made sundry motions tending to embarass the proceedings of this meeting, and while he endeavoured to hide he did but the more discover his partiality." When Sever and Pierpont had finished they were asked to withdraw, and the overseers drafted a statement to be signed by Pierpont. They asked him to apologize for having "reflected" on the government of the college and for having been "unwary and indiscreet" in his utterances, and to promise to abstain from any further prosecution of Sever in the courts. Clearly, Pierpont's offense was seen as nothing short of lese majeste, with the college seen as the sovereign and Pierpont being sentenced to expiation. Pierpont, however, refused to cooperate. When his reaction was communicated to the waiting boards, consternation reigned. Governor Shute ordered his council adjourned and left the meeting, in Leverett's words, "in some confusion and great dissatisfaction." For Pierpont to refuse to play his assigned role in the proceedings was but a repeat of his effrontery, now offered directly to the highest dignitary of the commonwealth and his council. The attack against the college had become an attack against the established order of the Bay Colony.

For Leverett and the college Pierpont's challenge was a most disturbing threat to charter and charter government. It was made more insiduous by the support Pierpont received from the Dudleys and from Cotton Mather. The latter had urged Governor Shute on the day of the meeting to grant Pierpont's degree or to allow the complaint to be taken up in court. But Mather went further than this. He suggested to the governor that he raise the question of the legitimacy of the college charter if the corporation should persist "by unreasonable challenges and presumptions to ... make their precarious conditions to be inquired into." As Leverett must have heard Mather's suggestions, they were not only disturbing but pernicious as well. Leverett was fully aware that it had been Dudley to whom he owed the presidency of Harvard, and that it had been Dudley who as governor had offered to forego any further inquiry into the legitimacy of the 1650 charter by acknowledging and confirming it in 1707 as the college's basic constitution. Knowing fully well that Mather and the Dudleys had been among the schemers against the college corporation, Leverett could not but perceive Mather's plain hint that that which Dudley had once done for the college Dudley might also decide to undo. Disturbing and pernicious, too, were the means chosen by Pierpont and alluded to by Mather. An inquiry into the legitimacy of the college charter and the college's disciplinary proceedings under it might first be launched in County Court, thus involving an inferior court in a constitutional question that had traditionally been taken up by the General Court sitting as a legislative body. That this was a sensitive matter was soon to be amply attested by the inclusion in the college laws of both Harvard and Yale of provisions prohibiting students on pain of expulsion, their parents or guardians from seeking judicial relief outside the college from any injuries suffered from college officials, before they had sought such relief from president or tutors or, if denied by them, from corporation or overseers. Such laws went on the books in 1734 at Harvard and in 1745 at Yeale. In the Pierpont case, however, the immediate threat disappeared in November of 1718 when the judges of the Charlestown court found that Pierpont had had a proper hearing before the college authorities and quashed his complaint. For Leverett and the college, however, the affair was not so soon forgotten. Leverett had become painfully aware into what troublesome waters the college might be pushed by the actions of an obstinate and abrasive tutor, and it is not likely that his feelings towards Sever had become any more conciliatory after the affair was officially closed. There also was to remain the remembrance of the novel experience of a court's possible interference into college affairs, a possibility not contemplated with equanimity by administrators who were used to receiving directives and correctives from their own constitutional governing bodies and from the legislature. Finally, there was the renewed uneasiness over the charter. How worrisome an issue this remained is best shown by Leverett's contemplated attempt five years later to cut the Gordian knot by proposing another move to obtain a royal charter. In 1718 the Pierpont case sent shock waves through the college and highlighted once more its intimate relation to and dependence on the established authorities of church and commonwealth.

It was then in May of 1720 that the tutors rose to question the corporation's governance under the charter. Of the three college tutors Flynt, Sever, and Robie, only Flynt was then serving as a member of the corporation. He and his two colleagues then argued that it had been the practice of the English universities and the intent of the 1650 charter to have the members of the corporation reside within the college and to administer its immediate daily government. To restore this arrangement, the tutors argued, would provide "a seasonable remedy" to the disorders that had followed of late in the wake of increasing enrollments. The tutors' argument thus made two points. To allow fellows of the corporation to live away from the college and thus to leave the administration of daily discipline to tutors who carried neither the prestige nor the authority of members of the corporation amounted to "a weakening and enfeebling [of] the standing government." For the sake of order in the college, this practice should be stopped. The second point then protested as unwarranted innovation the appointment of tutors who were not, at the same time, also appointed to the corporation.

The corporation was not greatly impressed with the tutors' arguments and, for various reasons, not likely to respond favorably. In fact, they did not respond at all. In June of 1721 Sever and the newly appointed tutor Welsteed then submitted a memorial to the overseers. Here they were more successful. The overseers accepted a committee report that a resident tutor should be appointed to fill a vacancy of the corporation. The corporation demurred and elected tutor Robie but, as if to balance the scales, refused to renew tutor Sever's term which expired in April of 1722. Again the overseers decided on a course that ran counter to that of the corporation, and again the corporation yielded and agreed to Sever's continuance. Corporation and overseers were now embarked on a running battle. The overseers based their deliberate overriding of the corporation's decision not to rehire tutor Sever on their contention that they had never ratified the 1716 by-law limiting a tutor's term to three years. The corporation on its part pointed out rightly that this had not prevented the overseers in 1720 from confirming Sever's second three-year term appointment and Welsteed's first. They also argued that the charter appendix of 1657 declared by-laws to be in force unless and until they had been vetoed by the overseers, and that such veto had never been disclosed. By June of 1722 the overseers' petition to enlarge the corporation and to add the resident tutors had reached both Council and House and led to the appointment of a joint committee. This committee then recommended that the request be denied because its objective could better be accomplished by a strict observation of the charter's intent. This intent, the committee held, had been to constitute the resident tutors as the fellows of the corporation and, as the Court records of 1650 indicated, to prevent the service of fellows on the board of overseers. Both houses endorsed this report and sent it to the governor for his signature.

Governor Shute signed the bill but added a proviso that the current three non-resident fellows and overseers remain as fellows of the corporation, and the new policy take effect only after the three current non-resident fellows vacated their fellowships in the natural course of events. Thus the House's desire to purge the liberal non-resident fellows from the corporation was effectively stalemated. Disputes and disagreeements continued to mar the relations between corporations and overseers, and the intent of the House continued to be thwarted by the refusal of the Council to respond.

It was at this stage in the affair that President Leverett seriously considered breaking the deadlock by applying to the Crown for another charter. The continuing agitation of the Dudleys and the Mathers against the college, their ever present threat again to call into question the legitimacy of the 1650 charter, the ease with which this threat could be used to advantage by disgruntled alumni, such as Ebenezer Pierpont, or tutors, such as Nicolas Sever, -- all these disquieting actual and potential actions by people who could effectively blackmail the college governors finally persuaded Leverett to contemplate a radical new departure by setting into motion an appeal for a royal charter. The occasion that suggested the move was Governor Shute's departure for England at the beginning of 1723 and his expressed readiness to seek royal support for the non-resident fellows in London. In the light of the history of the college charter Leverett's contemplated initiative represents an extraordinary reversal of positions. In the

1690's it had been the orthodox ministers led by Increase Mather who sought to use the Crown as an ally in their fight to keep the more liberal magistrates on the Council from visiting the college. Now the liberal ministers led by John Leverett were ready to seek the help of the Crown for keeping the orthodox ministers and their allies in the House and on the Council from taking over the corporation. Perhaps it was the news of the scandal that broke at Yale in 1722 which finally prevented Leverett from following through with his contemplated application. There President Cutler, a liberal Calvinist, had openly left the established church and declared his conversion to the tenets of Anglicanism. His declaration threw the colony into uproar and nearly destroyed the college. What but a petition to the King would have been more likely to bring upon Leverett's head a flood of accusations of treason and apostasy similar to that which had deluged Cutler at Yale? Had knowledge of Leverett's contemplated move reached the public in the Bay Colony, the future of Harvard might have been seriously jeopardized. While we cannot say whether the spectacle of the Cutler crisis at Yale was the decisive event that made Leverett reconsider, we do know that Leverett's draft charter application did not reach the Crown. Yet it yields precious insight into the thinking of Leverett and his friends and demonstrates how precarious in their view the college's situation had become in the winter of 1722-1723.

Leverett's draft charter in effect put the college corporation under the protection of the Crown and thus shielded it against the attacks of the Orthodox Calvinists of the Bay Colony. By reverting to features common to the charters proposed between 1684 and 1707, the draft removed the problem of making room for resident fellows by the simple device of enlarging the corporation to president, vice-president, treasurer, and fourteen fellows. The Crown's approval was made more likely by what appears to be a deliberate copying of some of the provisions of the charter of the College of William and Mary, which had been issued by the Crown to the Virginia petitioners in 1693. As in the Virginia charter the school is called "a certain place of universal study or perpetual college of divinity, philosophy, languages, and other good [liberal] arts and sciences," and the first president under the charter, John Leverett, is named president "for and during his natural life." Like the College of William and Mary, Harvard received the right to be represented in the lower house of the General Court "by one discreet and able person of their own number or of the better sort of inhabitants of our province of the Massachusetts Bay ... " Finally, besides the common phrases included in charters of this sort, Leverett inserted a reference to visitors who might hear appeals from members of the corporation. Leverett, however, did not specify who these visitors were and whether they were to be found in Massachusetts or in England. Clearly, the objective of the draft was to place the corporation as constituted by Leverett and consisting of his liberal friends beyond the reach of its orthodox detractors.

While Leverett was busy with his charter the deadlock between corporation and overseers and between House and Council continued. On August 23, 1723, the Council finally agreed to receive the corporation and grant it a hearing. At that occasion the corporation maintained that it had not been the intent of the original charter to have the fellows be residents of the college. The charter only specified that the fellows be inhabitants of the Bay Colony. They were to make the college laws, but their execution was to be left to the immediate government of president and tutors. The charter could not have meant, the corporation maintained, that the resident tutors had the power to elect the president, to choose and remove officers, themselves among these, to make the laws they were asked to administer, and to manage the revenues and determine the salaries. These were powers and responsibilities not lightly granted to "younger gentlemen of small experience," and it appeared contrary to reason "for persons in office who receive wages or salaries for their work, to be under no law referrring to their work but what is of their own making ... " The tutors' contentions, they said, were novel and contradicted by the history of the college. Never had it been held or practiced that the tutors or instructors in the college were necessarily the fellows of the corporation. Given the chartered right of the fellows to elect their successors, the corporation would cease to exist if the three non-resident fellows were to be ejected, since only the president, treasurer, and tutor Flynt would then be left, and they could not fill the charter requirement of a majority out of seven to elect new fellows. Finally, the corporation argued that the charter vested the right to manage the college funds and to fix salaries and allowances in the corporation rather than the overseers. They concluded that rather than depriving some of the current fellows of their membership a more acceptable way would be the enlarging of the corporation "provided that the resident tutors should never be able to make a major part." The fellows concluded by disclaiming any personal interest in their fellowships, attributing the "more difficult and perplexed" state of the college claimed by the tutors to the tutors' actions, and suggested that the tutors would find little reason to complain "if they would, as become Christians, study to be quiet and do their own business ..."

Then it was Sever's turn. His argument revolved around his contention that the charter had placed "the execution of all orders and by-laws" into the hands of the corporation, and that its members had no authority to delegate their powers to tutors and other officers and servants of the college. For the fellows to withdraw from the college and to allow others to manage the business of the college was "to pretend to such a power as I believe was never granted to any college under the British dominion." When the charter and the college laws spoke of President and tutors, the reference always was to members of the corporation who were entrusted with teaching duties in the college. The presence of non-resident fellows, Sever claimed, had no other consequence

> but to cramp and depress the characters of the resident ones, and render them insignificant and useless in the business of the college, unless it be to weaken the authority of the overseers too, the non-residents always having been chosen out of their number.

Sever added that a feeble resident government entailed lack of decorum and discipline among the students and decisions on scholarships being made by people who were not thoroughly acquainted with the recipients. He protested the tutors' low salaries, the three-year tenure law, and the choice of non-resident fellows from among the overseers, a practice which allowed the bringing of matters "by the fellows from themselves in corporation to themselves as overseers for confirmation." Sever's main point, however, was that the distinction between fellows and tutors, or Fellows of the Corporation and Fellows of the House, as they were sometimes called -- was unwarranted and without a difference. While he conceded that not all of the fellows had always been tutors -- there had not always been a need for five fellows acting as tutors --, he insisted that the tutors "until very lately" had always been fellows of the corporation. Non-resident fellows were unknown in Britain except "in extraordinary cases," and their introduction here and their replacement by other persons "with only a title, and that are upon no foundation" was "a thing entirely new under the sun." Sever wanted this practice stopped.

The Council's debate following the presentation by the corporation and by Sever was the last major event of the tutor controversy. Everything else that followed was anti-climactic. The Council voted not to concur with the House resolves that had remained unanswered for so long. It informed the House that it did not approve of constituting the resident tutors as the corporation and of preventing the fellows from serving on the board of overseers. The House, it seems, then let the matter rest. In the following May the death of President Leverett changed the entire situation. On the following day the overseers accepted Wigglesworth's election as fellow to take over the vacancy left by Thomas Robie. The corporation, on its part, showed a willingness to end the strife of the last few years by electing Joseph Sewall, son of Chief Justice Samuel Sewall and a friend to the orthodox party, to the presidency. Sewall, however, declined the nomination and, after a second unsuccessful attempt to select Leverett's successor, Benjamin Wadsworth took over the reigns of the college in July of 1725. While he was one of the three non-resident fellows whose eviction from the corporation had been sought by the House, his elevation to the presidency was balanced two months later by the unanimous election of tutor Sever to the corporation. With that step the tutor controversy faded from view, and new issues -- such as the claim of the Anglican ex-President of Yale, Timothy Cutler, to a seat among the overseers -- rose on the horizon. For a century the questions raised by Sever were to remain dormant.

What are we to make of the entire controversy? Seen in the larger historical perspective its outcome constituted a reaffirmation of the Reformation type of college governance even though a shift of relative power had occurred from the ministers to the magistrates. Sever had not intended to bring about such a result when he began his agitation, but given the religious and political situation in the Bay Colony it could hardly have been avoided. The mere fact that it was possible for Sever with the help of disgruntled partisans among the ministers to gain as much attention as he did indicates how weak the hold of churchmen had become on the colony's public affairs. Dissension in their own ranks coupled with the rise of heterodoxy in the commonwealth reduced their weight and influence in politics and allowed the academics in the college to raise their claim for participation in college government. That claim itself was based on the far older tradition of the medieval universities' corporate self-government, but the tutors were unable to revive it. While they sought to take advantage of the weakening unity of church and commonwealth they failed in their bid for power of their own and only helped the commonwealth to strengthen its hold on the college at the expense of the clergy. Government by external boards was to remain the colonial pattern.

10. An Eighteenth Century Crisis of College Governance: William and Mary at Mid-Century

At Harvard the decline of ministerial power over college affairs and the ascendancy of the magistrates in college governance had been provoked by the tutor rebellion. A similar series of events were to unfold in Virginia by the mid-1750s. Here, too, the teaching members of the college, most of them Oxford educated Anglican clerics, sought to assert their claims to self-government and, in the aftermath, were soundly trounced by the representatives of the Virginia gentry on the college board of visitors. Even though the masters constituted the legal college corporation, the visitors held most of the governing powers. They made and altered the college statutes and elected the members of the corporation, the rector -- the board's presiding officer -- and the chancellor -- the college representative at the Court in London. Their clash with the masters demonstrated once more that a body of clergymen standing on prerogative and corporate rights could not successfully resist lay representatives who were demanding that the college be responsive to and serve the interests of a secular society.

The event which first provoked the controversies between professors and visitors and, in the end, isolated the faculty as a foreign body in Virginia society, was the passage by the Virginia assembly of the so-called Two Penny Act in December of 1755. The act was to allow Virginians for the period of ten months to pay the clergy in money rather than, as had been customary, in tobacco. The clergy's salary had been 16,000 pounds of tobacco annually, and this was now to be paid at the rate of two pence a pound. Virginia's clergy, aware of the shortage of the tobacco crop and the rising tobacco prices, vigorously protested the act. Thomas Dawson, in 1755 newly appointed president of the college, and his colleagues, the clergymen-professors John Camm, William Preston, Thomas Robinson, and Richard Graham sought the intervention of Governor Dinwiddie. In this, however, they were unsuccessful, since the governor was not about to alienate the support of Virginians he needed for his military expeditions against the French. While some of the ministers sought to call a convention of the clergy in Williamsburg, Dawson, who was also the commissary of the Anglican Church in Virginia, wrote a letter to Bishop Sherlock of London and asked him to intervene on behalf of the clergy. By the time these steps were undertaken, the ten months during which the act was in force drew to a close, and the agitation began to die down. Two years later, however, it was abruptly revived when the assembly passed another Two Penny Act, this time for a twelve months duration. Infuriated, a group of Virginia clergymen dispatched John Camm as their agent to London to bring the clergy's case to the attention of the Crown. Bishop Sherlock came to their aid with a letter to the Board of Trade in which he spoke of the act as violating justice and equity and in which he pointed out that the clergy's right "must stand or fall with the authority of the Crown." The privy council obviously was impressed with the various arguments brought before them by Camm and his friends and on August 10, 1759, disallowed the Two Penny acts of 1755 and 1758. Camm, however, was less successful in Virginia. Upon his return he was severely reprimanded by Governor Fauquier who resented Camm's having brought London into Virginia politics, and having delayed his appearance before the governor for ten months. Camm's suits and appeals "to recover the full market value of his salary" all came to nothing. A bitter pamphlet war broke out in the colony which made the Anglican clergy and the masters of the college exceedingly unpopular with the Virginians and contributed to the rising revolutionary sentiment. The crowning blow came in 1767 when Camm's appeal to the privy council was dismissed on a technicality. While not having any direct bearing on events in the college or on the college's charter and statutes, the entire affair over the Two Penny Acts served to identify the masters of the college as clergymen who received their backing in

London and who thus stood apart from the main current of life in Virginia. This did not help to strengthen the college's political position.

Within the college itself the controversies surfaced in May of 1757 and pitted the masters against president, visitors, and governor. The conflict began when the visitors gave six months notice of dismissal to Thomas Robinson, master of the grammar school, and asked the chancellor to recommend a layman as successor. Robinson strongly protested the move to the chancellor, explaining to Bishop Sherlock that the visitors resented the independence of the clergy, expected to control a layman far more easily than a minister, and had fired him because he and his colleagues had reprimanded the usher of the grammar school, who enjoyed strong connections with some influential Virginia families. Professors Camm, Preston, and Graham as well as Emmanuel Jones, master of the Indian school, all endorsed Robinson's letter to Bishop Sherlock. President Dawson found himself placed in an exceedingly uncomfortable position. Already during the first Two Penny Act crisis he had shown a marked reluctance to support his faculty colleagues without reservation. Calling himself "a lover of peace and quietness" he had refused to call a convention of the clergy. Now he appeared reluctant to offend the visitors and Governor Dinwiddie. The latter also wrote a letter to Bishop Sherlock in London and in it justified Robinson's dismissal and added further charges. Robinson as well as Professor Preston, he wrote, were given to drink, carried out their duties irregularly, had married in defiance of college rules and, when asked by President Dawson to take their families and servants off campus to avoid disturbing the scholars, had moved into town and neglected their duties even more. Dinwiddie also censored the entire faculty for having called a clergy convention in 1757 in connection with their unhappiness over the Two Penny Act and for having refused to aid President Dawson in his ministerial duties during a recent sickness. The lines of battle were now clearly drawn: The faculty on one side; president, governor, and visitors on the other.

The next step in the ensuing confrontation was taken at the visitors' meeting of November 1, 1757. There the visitors learned that James Hubard, the usher of the grammar school whose reprimand by Robinson was thought to have precipitated the latter's dismissal, had now been discharged from his job allegedly "without any equitable cause." The visitors appointed a committee to investigate the circumstances and to report four days later. They received no help from President Dawson who, the committee said, "had informed the visitors at their last meeting of all the reasons he knew for their proceeding in that matter." As for the faculty, professors Camm and Graham and master Jones all claimed that according to the college statutes they could not state their reasons because the power of appointing or removing an usher belonged solely to the president and masters. On November 11 the visitors put to a vote the question whether they as visitors had the power by the charter and statutes to enquire into the conduct of president and masters in matters of the ordinary government of the college. They affirmed such a power, and thereupon asked the masters whether they wanted to continue refusing to divulge their reasons for the dismissal of Hubard. The masters declinedto change their minds, and the visitors removed them from office as of December 14. Three days later, however, Mr. Jones had a change of heart and was reinstated by the visitors. Thus the visitors had reduced the college faculty to two. Camm, Graham, and Robinson were dismissed, Preston had left apparently on his own accord, and only Thomas Dawson, president, visitor, and commissary, and Emmanuel Jones, master of the Indian school, remained.

In 1757 the visitors, by and large, emerged as the prevailing party. On campus it was left to President Dawson to enforce their ruling. He met with master Jones, his one remaining faculty member, and the two demanded of their erstwhile colleagues that they vacate their quarters and hand over keys and college papers in their possession. When Robinson and Graham refused -- Camm was absent on that day -- Dawson and Jones instructed the housekeeper and the steward to cease serving the discharged masters. On the next day Camm returned and, upon being approached by Dawson and Jones, joined Robinson and Graham in their refusal to leave the college. Dawson and Jones now decided to consult with a lawyer, and to ask Graham to hand over the accounts of the college to them. Graham's answer was evasive. He would "go about them," he said, "when the weather was warmer," and, adding insult to injury, when "there was a society to examine them." Apparently, Graham did not think that Dawson and Jones constituted the college corporation. A few days later Dawson wanted to install the new grammar school master, the Rev. Mr. Gronow Owen, into his apartment and again demanded the key from Robinson. Being refused, Dawson now ordered the doors locked and barred to all the faculty. This action of late March 1758 appears to have ended the "sit-in" of the dismissed faculty, and in subsequent records we can follow the gradual appearance of newly appointed masters. After Owen two masters of the philosophy school arrived, Jacob Rowe as professor of moral philosophy and William Small as professor of mathematics. In June the faculty, then consisting of Dawson, Jones, and Owen, resolved to bring a suit in Chancery against Graham to settle and to deliver the college accounts to the president and masters, and in October, acting on the recommendation of the chancellor, they appointed the Rev. Mr. Thomas Hatton as the new master of the grammar school. The visitors, in smoldering resentment over the firing of Hatton's predecessor Hubard and unhappy over the faculty's endorsement of another clergyman, ordered the masters to allow Hatton dining privileges at their table and never to dismiss him without first informing the visitors and giving them their reasons. In the meantime Robinson had filed a writ of mandamus against the college visitors which on November 6, 1759, was denied by the court. Robinson, however, was granted the right to appeal his case to the King in Council. Similar actions were taken by Camm and Graham and led in 1763 to a reversal of Camm's and Graham's dismissal by the visitors. Robinson, however, had died before that time. By

1759, however, agitation on the campus appeared to have died down, a new faculty assembled, and the visitors were again in control of the college. Not only had they dismissed three of their challengers, but they had also pressed through significant interpretations of the charter and the statutes, interpretations which enhanced their relative power. They now claimed the right to inquire into the faculty's proceedings in the ordinary college government which, by statute, was to be in the hands of the corporation. As shown by the dismissals, they also had assumed powers to deprive the masters of their rights as members of the corporation. Whatever hopes the faculty might still have cherished for redress now rested on the appeals they had filed against the dismissal. Help for them would have to come from the Bishop of London and the King in Council.

The faculty's channel of communication to London was the commissary who usually also served as the college president. This channel, however, was far from effective. Commissary Dawson, as we know, felt highly uncomfortable being caught between the conflicting claims of faculty and visitors. If his colleagues on the faculty resented his refusal to push their claims against the alleged illegality of the Two Penny Acts and to call a clergy convention, other clergymen undercut his creditability in London by reporting his having sided with Governor Fauquier and the visitors against the clergy and the faculty. William Robinson, Virginia clergyman and hopeful aspirant to Dawson's office of commissary, wrote Bishop Sherlock in November of 1760 that both as president of the college and as commissary of the Church Dawson had become a "mere tool" of the visitors. He was, said Robinson, "a false brother." Furthermore, Robinson accused Dawson of being "a very immoral man," frequently intoxicated and often to be found in public houses playing cards. When Dawson died in December and Bishop Sherlock soon thereafter, Robinson succeeded in receiving an appointment of commissary from Bishop Hayter and, after the latter's death in 1762, from Hayter's successor, Bishop Osbaldeston. In that office he was to be no more successful than Dawson had been. Unlike Dawson he was not a faculty member and did not receive the customary appointment aspresident of the college. He, was, however, a close confidant of Professor Camm and, as such, cordially disliked by Governor Fauquier. Fauquier saw in him a mouthpiece of the faculty, and advised Bishop Sherlock "to direct his commissary to break off connections with Mr. Camm who winds him about his finger just as he pleases..." Sherlock, of course, did nothing of the sort. Robinson complained to him soon after his appointment, that the visitors refused to appoint a professor of divinity, and appeared consistently to appoint laymen rather than clergymen as visitors and as professors. He ascribed the disorderly behavior of the students to the visitors' continued interference in the faculty's administration of discipline, and he expressed hope that the chancellor would appoint president and masters and would come "to protect them in their duty ..." In the main, however, Robinson's attempts at softening the visitors' rule over the college succeeded no better than had Dawson's.

The only good news amidst growing pressures from governor and visitors was the announcement of President Yates at a faculty meeting in January, 1764, that, in conformity with a privy cuuncil decision, the visitors "had ordered the Rev. Mr. Graham and the Rev. Mr. Camm to be reinstated in their former professorships." Apart from this, for the faculty matters went from bad to worse. The visitors found it necessary to admonish the Professor of Moral Philosophy, Jacob Rowe, for drunkenness and finally to dismiss him for having led students in a riot with apprentices of the town. They likewise censored Gronow Owen, the master of the grammar school, for drunkenness and other indiscretions. This led subsequently to Governor Fauquier's interventions and Owen's transfer to a parish in another county. These vacancies were eventually filled by the appointments of Richard Graham as professor of moral philosophy, and, on August 14, 1760, of William Webb and, after Webb's departure, on March 29, 1762, of James Horrock as master of the grammar school. While all this was going on the masters watched apprehensively the proceedings in the Virginia courts which were to lead to the refusal of granting full compensation for the salaries the faculty had lost due to the Two-Penny Acts. The agitation over these so-called parsons' cases provoked a bitter pamphlet war and further alienated and isolated the clergy. The final straw for the faculty then came with the elevation of Horrocks to the college presidency. Many felt that Graham and Camm had stronger claims to that office and were particularly incensed when they learned the circumstances under which Horrocks had been chosen by the visitors.

The appointment of Horrocks placed at the center of the struggle between visitors and masters a debate over the desirability of reform of the college charter. This discussion was sparked by a college statute which the visitors had adopted on September 14, 1763. The visitors thereby formally granted themselves the right by majority vote to discharge president and masters at their pleasure and to exercise direct and final authority over the internal management of the college. They also prohibited faculty members from taking on a parish assignment while holding office in the college, required their residence at the college, and ordered president and masters to take an oath on the statute. The masters, quite rightly, "looked upon the statute," as Robinson wrote, "as an attempt to repeal the royal charter of the College itself..." They were outraged with Horrocks and his appointment because they learned that as a condition for being chosen the visitors had obtained from him the required oath on the statute. There can be little doubt that the statute constituted a severe infringement on the charter rights of the members of the corporation, placing their tenure as members of the body corporate at the mercy of an outside board and changing, without having obtained the consent of the corporation, their basic right to administer their own affairs. The visitors could claim that they asked for no other powers than customarily held by the trustees of other colleges. But in arguing thus they ignored the fact that most governing boards elsewhere were themselves the corporation, whereas in Virginia the faculty was legally the body politic. Opposition mounted quickly in the faculty and received support from the college chancellor, the Bishop of London. President Horrocks, sensing that a fundamental point of college law was at issue, pressed for a revision of the college charter in order to spell out more clearly the respective responsibilities and rights of visitors and masters. It was then Professor Camm who precipitated a showdown. When the visitors asked him to choose between his professorship and his parish Camm, refusing to respond to the question, argued that he was confronted with a charge and demanded the right to submit a written defense. When after considerable hesitation the visitors finally agreed to receive it, Camm severely condemned the statute, chided President Horrocks for having taken an oath on it, and announced that he would appeal the whole affair to the King who was the supreme visitor of a college founded by the Crown. Camm's threat of appeal was effective. The visitors decided not to press their demands, and several of them asked Camm to tutor their children who were not doing well under President Horrock's supervision of the grammar school. Later, on May 1, 1766, they agreed to amend the statute. The day-to-day administration of the college was left to the faculty under the supervision of the visitors, nothing was said about the visitors' power of dismissal, and the prohibition of parish employment was held not to be applied retroactively. Camm, in other words, could keep both his parish and his professorship. The oath on the statute and the prohibition of future outside employment, however, remained. The key issue of the right to faculty dismissals was smothered in silence; the visitors did not give up their claim to supervision of the corporation's internal college government, and, by keeping the oath, they upheld the principle of their action. Not everyone saw it that way and some, no doubt, agreed with Governor Fauquier who complained that the visitors had allowed "Mr. Camm [to] lead them by the nose." In retrospect however, it is difficult to maintain that the 1766 amendment resolved any of the key issues the 1763 statute had raised.

Little was to change in this perpetual tug-of-war between masters and visitors in the years preceding the American Revolution. The faculty continued to fight for their corporate privileges; the visitors kept on chipping away at them as much and as often as they thought they could without precipitating an intervention from the Crown. For a time both parties seemed to agree on the desirability of a charter revision. The visitors felt a need not only to meet the faculty's desires in some manner, but also to improve their relationship with Bishop Terrick, the new college chancellor. In the summer of 1767 this relationship became particularly strained when the visitors refused to appoint William Halliburton, the bishop's nominee, to the professorship of moral philosophy. President Horrocks soon thereafter informed Terrick that some of the visitors were considering turning for future suggestions of faculty members to their acquaintances among the London merchants. The visitors on their part felt it necessary to send Terrick a long and detailed explanation of their recent action knowing that the Bishop's correspondents did their best to make the visitor's decisions appear arbitrary and unwarranted. One of these correspondents was Commissary Robinson who in the fall of the same year gave the bishop the following view of the college affairs:

> Disputes in the College, my Lord, are like to run as high as ever, as I think you Lordship will see plainly enough in the letter sent to your Lordship by the visitors and governors. The visitors and governors are perpetually clamoring for discipline to preserve order and regularity among the students, and yet for ever assuming such powers to themselves as render discipline by the president and masters impracticable. They persist in their opinion that the charter gives them a power to remove members of a corporation who are allowed to send a representative to the assembly at pleasure. For

> which I discern no remedy but a new and more explicit charter. They will not, notwithstanding what your Lordship has said on that point, suffer the professors to hold such livings as interfere not with their duty in college...

Everything now seemed to point to an emerging consensus that the charter problem would have to be tackled. Perhaps the matter was aided by Governor Fauquier's death early in 1768. President Horrocks appeared to draw closer to Professor Camm, and in a letter to Bishop Terrick now went so far as to call the visitors "ignorant and intemperate," and told the bishop at the same time that the faculty would soon present him and the visitors with a statement of their position. But these appearances proved to be misleading, and the hopes placed in them illusionary.

The faculty statement reached the visitors on May 4, 1768. It received a polite but chilly response. President and masters had argued that they derived their powers directly from the charter; that among them was the ordinary government of the college to be carried out in agreement with the statutes; that the visitors could hear and adjudicate complaints; that the masters and the president must have the power to award scholarships and appoint college officials and servants, must be free to accept or decline parish appointments and to administer the college revenues under the supervision of the visitors. The visitors granted the faculty the right to dispose of a named scholarship and to administer the revenues. Nothing, however, appeared in their minutes concerning the question of delegated or chartered power of the faculty; nothing was said about the ordinary government of the college belonging to the faculty and the power of appointing college officials. No mention was made of permitting the faculty to keep or accept parish appointments or of affirming their right to the college revenue. Rector Fontaine, in fact, confirmed this essentially negative stance when he wrote Bishop Terrick that the visitors reserved the right to grant or deny permission to the masters for outside employment.

As might be expected, the faculty's reaction was one of disappointment and anger. Many now saw no other way but an appeal to the Crown. They could not but notice that the consessions offered them by the visitors were minuscule and, in the case of the hot suppers, not even asked for. On the important issue of delegated power and control of the college's internal affairs the masters had been met with silence. Their frustrations were given expression in their letter of July 22, 1768, to the chancellor. President Horrocks obviously had filled them in with oral reports of the conversation and debates at the visitors' meetings, and much to their chagrin the masters learned that the visitors' silence on the major issues was deliberate. Many of the visitors had opined that "they thought it [delegated power] a proper term enough," and that as far as the faculty's view on their right to internal government was concerned, the visitors would agree that they [the faculty] be allowed "to appear with their Council before the visitation." To vest the faculty with power to administer charitable scholarships, the visitors were said to have remarked, would be "impiety to the dead and injustice to the living." President Horrocks furthermore reported that, although not stated in the visitors' minutes, the visitors had in fact asserted their full control over the appointment of officers and servants and over acceptance of parish appointments by members of the faculty. The masters were understandably upset. They wrote to Bishop Terrick that it seemed apparent to them that the visitors "are desirous of judging us by law when that will answer their design of punishing, but, when it will not, of judging us without law." They felt, wrote the masters, that the visitors appeared "willing to retain the power of disposing, in effect, of the revenues of the college in as full and ample a manner as if no transfer of the revenues had ever been executed by them to the president and masters."

> It seems impossible for us [president and masters wrote]...to make any other conclusion but that the visitors mean to keep the grand points of power, on which the practical utility of a college must turn, unsettled and in confusion, and to leave us without the authority which is necessary for obtaining that discipline and regularity which the visitors are desirous should be enforced...

They concluded that they saw no other solution but a petition to the Crown for a new charter or an appeal to the King as the supreme visitor of the college. What they now wanted to know from the chancellor was which course of action he would avvise them to follow.[55]

As the sixties drew to a close the chances for charter revision dimmed. While the masters felt as disaffected as ever, Virginians, excited by the tremors of the approaching Revolution, were ill disposed to listen to the faculty's complaints, and Chancellor Terrick received nothing but negative advice from President Horrocks on the charter question. Horrocks had by now also been elevated to the commissaryship of the Anglican Church, and, after the arrival of a new governor, Lord Botecourt, aspired in addition to an appointment to the governor's council. His ambitions further strained his relations with his colleagues on the faculty who would have preferred to see Professor Camm, over the years theirs and the clergy's most effective spokesman, to have been appointed as commissary. When Horrocks aligned himself with the interests of the Virginia laity on the board of visitors and on the council, when he refused to join Professor Camm in a request for the King's writ of mandamus to pursue one of the remaining parsons' causes, and when he declined to transmit a report on this question as a petition to the governor, the break between him and the faculty became irreparable. The visitors on their part saw no reason to desist from their attempts to place tighter reins on the faculty. In September of 1769 they rebuked Professor Camm and grammar school master Josiah Johnson for having married and moved off campus and thereby neglected their duties to the students. In December they resolved that in the future professors had to live at the college and to vacate their positions when and if they married. In the next year they debated the promulgation of new statutes which would give them greater and more direct powers in the administration of discipline and which would re-order curricular requirements. This produced another faculty protest memorial which raised the specter of students playing the visitors against the faculty and thus bringing to an end entirely the "authority and government" of the college. The memorial also took vigorous objection to the proposed removal of the requirement of the classics and to the permitting of mathematical studies without previous studies in the classics. Such a plan would depart from the program "hitherto approved of in the most famous universities" and would do "abundantly more injury than benefit to the public."[56] The faculty could not but feel as a beleagured minority in their collegiate outpost of academic learning. Within their college, however, they could still cherish a few instances in which they succeeded in keeping the visitors from taking over. The two debated statutes apparently were never put into force; the masters kept their parishes notwithstanding the visitors' displeasure, and Camm established himself as a married man outside the college walls. Yet there could be no doubt that with or without charter revision, the visitors meant to renew or hold on to the powers they had claimed or gained in the past. At the outset of the seventies the problems of college governance in Virginia remained unresolved, and the college remained under the effective control of its board of external governors.

11. The Great Awakening, Toleration, and the Colleges: Yale New Jersey, and King's*)

The Great Awakening was the catalyst for breaking the mold of joint ecclesiastic-secular college governance. Its very nature as an evangelical movement welcoming students and teachers from all Protestant denominations placed it in opposition to the idea of an established church order in colony and college. Expecting to benefit from population growth and geographic expansion its spokesmen stressed a common Protestant Christianity as well as a common English nationality. They were supported in this by the authorities in England who, despite their commitment to an Anglican establishment, were also bound to a policy of toleration of dissenters. Thus when in 1763 the Crown recommended an Anglican fund raising effort for King's College and the College of Philadephia it spoke of "the various denominations of other Protestants" who in addition to the Anglicans had jointly pledged themselves to "the support and extension of reformed religion." To be sure, this statement of royal support came decades after the flood tide of the Awakening had passed, and Crown authorities had been somewhat less accomodating in the 1740s when the Awakening first appeared at the New England colleges. But even then the main opposition arose from the colonial congregational and presbyterian clergy at Harvard and at Yale. These men were the defenders of the old established order aginnst the preachers of the Awakening, the radicals of their day. Toleration came to be the conciliatory response of British authorities and of most of the colonists. In its train came the demise of joint clerical-secular college governance, and the eventual separation of colleges sponsored and directed by legislative bodies and colleges sponsored and governed by independent bodies.

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*) Source documentation for material contained in this section may be found in my "From Religion to Politics: Debates and Confrontations over American College Governance in the Mid-Eighteenth Century," *Harvard Educational Review*, XLVI (August 1976), 399-413.

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The Awakening had its first and near fatal impact on the college in New Haven. At the beginning of the 1740s the Collegiate School was governed by an exclusively clerical board of trustees. In 1745, however, under the leadership of their recently elected rector Thomas Clap, the trustees exchanged their freedom from legislative oversight for the privilege of full incorporation as The President and Fellows of Yale College. Even then they did not count among themselves civil representatives of the colonial government, though Clap had bought the security afforded by legal incorporation with the legislature's acknowledged right of oversight and interference. The Assembly, so read the new charter, "when they shall think proper," might inquire into or repeal and disallow the trustees' legislative andadministrative rules and ordinances. Perhaps Clap thought this to be an unavoidable and harmless concession, amply compensated by the legislators' pledge of annual cash grants to the college "to continue during the pleasure of this Assembly..." However inconsequential or weighty the concession rellly was could only appear in the future. But in 1745, within the short span of five years after his elections as rector, Clap had succeeded in formally incorporating the collegiate school and bringing it under the oversight of both Connecticut's established presbyterian churches and its legislature. The governance of the provincial college now conformed in principle, if not in every detail, to that of other colleges founded after the Reformation.

Clap cherished the participation of the legislature in college affairs because he had found its support invaluable during the tumultuous years of the Awakening. Initially, he had welcomed the arrival on campus of such well known revivalists as George Whitefield and Gilbert Tennent, but he changed his mind when he witnessed their effect on the Yale students. Encouraged by these visiting "New Lights", as they were called, the students began to question the piety of their "Old Side" teachers and ministers. This led the Yale corporation to decree in September of 1741

> that if any student of this college shall directly or indirectly say that the rector, either of the trustees or tutors are hypocrites, carnal or unconverted men, he shall for the first offense make a public confession in the hall, and for the second offense be expelled.

Clap soon found occasion to apply the ordinance and expelled David Brainerd for having said of his tutor that he possessed no more grace than a chair. But the turmoil persisted, split the New Haven church, and led Clap to send the students home. In April of 1742 a committee of the legislature, alarmed that students had "fallen into several errors in principal and disorders in practice," recommended that the General Court grant funds to hire a college minister. A month later the Assembly stepped in and with its "Act for Regulating Abuses and Correcting Disorders in Ecclesiastical Affairs" attempted to ban all but settled ministers and their supporters from Connecticut pulpits. Clap and the college trustees were wholly in sympathy with these drastic and repressive measures against the New Lights. In their concern over upholding the Old Side establishment of state, church, and college they saw in the legislature their strongest and most reliable ally.

Highlighting once more the college-church-state nexus the most acute crisis involving the college directly in the turmoil of the Awakening came late in 1744. Two students, the brothers John and Ebenezer Cleaveland, while on college vacation at home in Canterbury, Connecticut, had attended New Light worship services with their parents. When Clap and the tutors heard of this they charged the brothers with having violated the rules of the Gospel as well as the laws of the colony and college. John Cleaveland apologized for his ignorance of the laws as Clap had defined them, but refused to admit that the meetings he had attended were anything other than gatherings of a legally constituted church. He objected strenuously to what he considered the unwarranted application of college laws outside the confines of Yale and during vacations: "For we always thought," he told Clap, "that when we were out of New Haven we had full liberty to go to what meeting we pleased without a thought of transgressing any college law." But Clap would have none of this. "All college laws," he retorted, "excepting a few little ones extend farther than New Haven bounds." The college had a duty to enforce the ends for which it had been designed by the Assembly, and speaking for the tutors and himself he added:

> We conceive that it would be a contradiction in the civil government to support a college to educate students to trample upon their own laws and break up the churches which they establish and protect, especially since the General Assembly in May 1742 thought proper to give the governors of the college some special advice and direction upon that account; which was to this effect, *that all proper care should be taken to prevent the scholars from imbibing those or such like errors*; *and that those who would not be orderly and submissive*, *should not be allowed the privilege of the college*.

Pressed to justify punishing students for violating a law which could be said to exist only by implication Clap told the Cleaveland brothers of knowing that attending a lay meeting outside of New Haven was contrary to his judgment, "and if you do not go according to my judgment you can't expect to enjoy college privileges..." Clap took it upon himself to personify both the law of the college and the law of the colony. Only the students and a few sympathizers protested. The New York *Post-Boy* published a letter whose author begged to be excused "if I am a little warm upon this late stretch of college power," and the Yale students printed and distributed John Locke's *Essay on Toleration*. This made hardly a dent on the common front of college administration, old-side establishment and General Court.

The Cleaveland affair and the continuing possibilities of renewed rebellion among students and young tutors gave added impetus for Clap in 1745 to seek incorporation for the college. Once that was accomplished he could rest his own authority and that of the board of trustees on the charter rights of a corporation backed by the General Court. The terms of the charter broke new ground not, as has often been stated, by the appointment of a group of non-resident ministers to the corporation, but by the exclusion from it of any and all tutors and professors. Both at Harvard and at William and Mary non-resident governors served among the Overseers and the Visitors respectively. But at Harvard at least some of the tutors and one professor were members of the corporation, and at the Virginia college all of the professors together with the president constituted the corporation. At Yale in 1745 Clap barred all teachers because he recognized that threats to the Old Side establishment were most likely to arise among young and inquisitive college tutors than among established ministers disposed to defend their pulpits and seats on the corporation. Perhaps Clap, too, was reminded of the defection of ex-President Cutler and tutor Samuel Johnson to Anglicanism, a shock which nearly had closed the College two decades earlier, and of the rebellion of the Harvard tutors in the 1720s. At any rate, Clap rested his faith on responsible external governors, placed them directly under legislative oversight, and openly demonstrated his distrust of college teachers.

The same concern for keeping the college a law to itself and for minimizing the possibilities of rebellion from within and of support for dissension from without is manifest in the 1745 laws of the college drawn up by Clap. In these the students were subject to the college and the church of New Haven and to the disciplinary authority of president, tutors, fellows, and, ultimately, the General Court. They were also specifically prohibited from attending any religious services not appointed by public authority or approved by the president, and from taking any complaint or bringing any suit against any other member of the college to a civil court unless they had first obtained permission from president or fellows. Clap wanted to insure the inviolability of the college's autonomy as a provincial institution against any interference by municipal authorities or inferior courts. Having thus circumscribed narrowly the spheres assigned to teachers and students Clap had anchored the college firmly in the bedrock of its associated institutions of church and state.

It is one of the supreme ironies of Clap's stormy presidency that it was his own desertion of the guidelines he had laid down which eventually terminated his career in strife, riots, and near extinction of the college. It was Clap himself who, once he felt out of sympathy with his brethren in the Connecticut chruches and with sentiment in the Assembly, began to loosen the connections that held the college to church and state. In 1747 he still had written proudly that his charter and laws had "reduced the college to a much more perfect state," and that the trustees, "not so proper or usual a title for the governors of a college in a more mature and perfect state," had now become fellows. But pride over internal changes could do little to prevent the outside world from challenging Clap's claim to autonomy for the college and to autocracy for himself.

The challenge came in 1753 with the opening of an Anglican church in New Haven. Clap abruptly terminated the relationship of the college to New Haven's First Church and ordered all students without exception to worship and to receive religious instruction within the college. He obviously meant to respond to the Anglican threat by drawing the college community ever closer upon itself, even if that meant reversing his previous policy of integrating the college into the existing establishment of presbyterian churches and state. His ban on the students' church attendance outside the college offended Connecticut Presbyterians as much as Anglicans, and both groups protested strongly. In response Clap only remarked that no community could exist without enforcing uniform rules for all its members. He was now determined "to go it alone" and break the bonds which held him to church and state.

Anglican reaction to Clap's new ordinance came quickly and effectively from Samuel Johnson, newly elected president of King's College in New York. Johnson, Yale alumnus and ex-tutor and after his conversion and Episcopal ordination the long-time spokesman for Connecticut's Anglicans, warned Clap:

> Tell it not in Gath! much less in the ears of our dear mother-country, that any of her daughters should deny any of her children leave to attend on her worship whenever they have opportunity for it... For God's sake do not be so severe to think in this manner, or to carry things to this pass! If so, let Dissenters never more complain of their heretofore persecutions or hardships in England, unless they have us tempted to think it their principle, that they ought to be tolerated, in order at length to be established, that they may have the sole privilege of persecuting others

Johnson was blunt. He reminded Clap that New England's Anglicans might have to complain of Clap's policies to "our superiors at home," who, in turn, might conclude that Yale College, not having been incorporated by the Crown but by the colonial Assembly, might be a "nullity in itself..." Besides, the colony's act of incorporation might also endanger Connecticut's status in law. If that were not enough, Johnson added that Yale College had been funded with the aid of such Anglican donors as Elihu Yale, Bishop Berkley, and, through the annual contributions of the Connecticut Assembly, the colony's Anglican taxpayers. As much as Clap must have resented such lessons of contemporary history which told him of Connecticut's changing demography, of English law, and of his own previous views of college-church-state relationships, he really had no choice but to concede the points. Johnson's threat of appeal to the Crown was too formidable to risk.

Clap's concession, however, came neither gracefully nor without reserve. Wothout announcing his changed policies he began to grant leave to Anglican students who requested to attend services of their faith. Clap coupled this reversal with a spirited defense of his original position and a novel reading of college history. He declared that the laws of the college and the rules of peace and charity demanded that the purpose and order of the college as laid down by the founders be preserved. There was no violation of the liberty of conscience involved in this, he told Johnson, since Anglicans who entered the college did so on their own free will and by entering accepted the college rules. In a twenty page pamphlet especially written and printed for the occasion Clap argued that "the original end and design of colleges was to instruct,educate, and train up persons for the work of the ministry." Though ever since the Reformation colleges had been chartered by the civil government, they were run by ecclesiastical persons for spiritual purposes. Thus, he argued, they were religious societies and, because their purpose was to train ministers, they were superior to ordinary churches which trained the common people. In preparation for this task of training ministers the trustees had been accumulating a fund for the endowment of a professor of divinity since 1746 and had, in the meantime, asked the president to perform that role. As to the contributions of Messrs. Yale and Berkley, they surely knew, wrote Clap, that they were supporting the intent of the original donors and could not expect to alter the principles of the foundation. He added that Connecticut's tax-paying Anglicans had been amply repaid by the education of Episcopal ministers. In this interpretation of college history and policy Clap virtually ignored the effects of the Reformation on college purpose and government. He angered the Anglicans by substituting insult for injury and with his arrogant claim for the superiority of colleges to churches offended presbyterian ministers and magistrates as well. All he accomplished thereby was to isolate himself.

Clap's sparring with the Anglicans, it turned out, was but a prelude to a far more serious battle to break out in the 1760's. From his announcement that colleges were superior religious societies Clap argued that they could carry on religious instruction, worship, and ordinances "within their own jurisdiction, by their own officers, and under their own regulation." That was his justification for his withdrawal of the students from the New Haven church and for the subsequent organization of a separate college church under his own direct supervision. In March of 1756 the trustees installed Naphtali Daggett as Professor of Divinity, and on July 3, 1757, Daggett preached his first sermon as the pastor of the newly established Church of Christ in Yale College. Within sixteen years of his election to the presidency Clap had thus succeeded in redefining the society over which he presided. If his way were to prevail the college for the training of civil servants for state and church was going to become a church seminary, its first and senior professor its minister or chaplain. Doing this Clap had not only affronted members of the Assembly and others in Connecticut who believed in the original purpose of the college, but he had also violated the Saybrook Platform which gave the consociation of churches a voice in all matters of church separation. To make matters worse, in September of 1757 Clap then sought to oust Joseph Noyes, the minister of New Haven's First Church, from the college corporation by means of a heresy trial. Here, however, Clap was forced to back down by a gathering storm of protest and resistance to his high-handed and arbitrary administration. As Louis Tucker, Clap's biographer, reports, the Yale controversy which had begun as a religious issue spilled over into politics, and "in the course of the dispute, weighty questions were raised relative to the nature and purpose of Yale, the relationship of the school to the General Assembly, and the extent of authority of the Corporation and President Clap..." When these questions were finally taken up in the Assembly, the college issue entered the political arena. There Clap was to experience his greatest triumph and his ultimate defeat.

While in Connecticut Thomas Clap sought first to establish and then to dissolve the traditional ties of college to church and state, these relationships were also being debated in New Jersey, and New York. In these two provinces a college had come into existence after the high tide of the Awakening had receded. The College of New Jersey and King's College operated in colonies where religious diversity of the supporting population was the norm rather than a subsequent development. The colleges therefore found accommodation to the various denominational groups to be in their own self-interest. The denomination which appeared to be in nominal control on the board of trustees -- the Presbyterians in New Jersey and the Anglicans in New York -- emphasized their stewardship over rather than possession of the institution. The New Jersey charter proclaimed hospitality to students "of every religious denomination" with "free and equal liberty and advantage of education ... notwithstanding any different sentiments in religion..." In New York President Samuel Johnson assured parents that he had "no intention to impose on the scholars the peculiar tenets of any particular sects of Christians, but to inculcate upon their tender minds the great principles of Christianity and morality in which true Christians of each denomination are generally agreed." Thus in these middle colonies the new colleges founded at mid-century endorsed the English policy of toleration as best fitted to their particular circumstances.

The origins of the College of New Jersey present us with a case study in applied denominational toleration and accommodation to the secular as well as religious desires of many diverse proponents and supporters. The struggle over the founding took the form of a three-cornered contest among presbyterian factions in the colonies of New York, New Jersey, and Pennsylvania. Members of the New York presbytery wanted to establish a provincial institution on the model of the New England colleges or European universities. In the New Brunswick presbytery -- joined with the New York and New Castle presbyteries in the synod of New York -- revivalist New Light ministers hoped to strengthen the so-called Log College, an evangelically oriented academy founded sometime between 1728 and 1730 by William Tennent, Sr. A third group, Old Side in inclination, cnetered around Philadelphia and was organized in a synod named after that city. They were suspicious of their brethren in New York and New Brunswick, and their insistence on a synodical examination of ministerial candidates led in 1745 to a formal split of the synod. All the while the New York presbytery held on to their plans for a college and hoped for an eventual reconciliation among the warring factions. They consulted with presbyterian laymen in New York City and were confirmed in their belief that they must not found a synodical academy or seminary which would contribute nothing or little to solving the problem of proper ministerial training. They needed a degree-granting college incorporated by the government. They thus declared that

> though our great intention was to erect a seminary for educating ministers of the gospel, yet we hope it will be a means of raising up men that will be useful in other learned professions -- ornaments of the State as well as the Church. Therefore we propose to make the plan of education as extensive as our circumstances will admit.

Like the colleges in Massachusetts, Connecticut, and Virginia the projected institution was to produce graduates who could be expected "to sustain with honor the offices they may be invested with for the public service." To draw into its classrooms young men of presbyterian, Quaker, Dutch and German reformed and Anglican background, the curriculum had to compare favorably with that in use at Harvard and Yale. Finally, the planners felt, their chances for success depended heavily on ready financial support. They therefore began a subscription drive in New York and New Jersey which by March 1745 netted pledges of £ 185 in New Jersey currency. The New Lights of the New York presbytery had come to feel that they could succeed and survive only if they avoided sectarian and exclusively religious objectives and proposed a college that would serve all sides and interests in the middle colonies. Events proved them right. Not only did they found their college, but by 1758 they also could participate in the reconciliation of the once hostile presbyterian factions.

With much the same desire to avoid identification with particular secular interests the founders also stressed their intercolonial character. When the acting governor of New Jersey, John Hamilton, signed the charter of the College of New Jersey on October 22, 1746, the fourth colonial college came into existence. It was incorporated under a trusteeship form of government familiar to Presbyterians from the dissenting academies in England, the academies of Scotland, and the 1701 charter of Connecticut's collegiate school. All of the seven named trustees were Presbyterians; three of them held pastorates in New Jersey, one in New York, and three were New York laymen. These men thus constituted the first intercolonial governing board of an eighteenth century college. Their number was permitted to grow to twelve, the remaining five to be chosen by the original seven. When the choice was made in the summer of 1747, it turned out that all five of the new trustees were graduates of the Log College, representing among themselves the frontier areas of Pennsylvania and New Jersey. If New Light clergymen were dominant on the board, the institution nonetheless was a college and not a religious seminary. Its charter made reference to neither church, presbytery nor synod. It did not make any mention of the training of ministers. But the college also shunned ties to the colony's government. None of the trustees served in any ex officio capacity, and the charter neither contained nor hinted at any promise of financial aid to come from the legislature. The charter, in fact, had been authorized by the governor without any action by the legislature. The College of New Jersey thus commenced its career in 1746 without the benefit or hindrance of the traditional linkage to joint supervision by state and church.

It did not take long, however, for the colony of New Jersey to assert its authority as guardian of the rights of all its inhabitants and to insist on having a voice in college government. The guiding force in a reform of the college charter was Governor Belcher, newly arrived from Massachusetts, intimately acquainted with the governance of Harvard College, and anxious to strengthen the position of the College of New Jersey -- his "adopted daughter" -- by tightening the relationship between school and colony. During the early part of

1748 he negotiated with the trustees, insisting on ex officio membership on their board for the governor and members of his council and on the role of board president for himself. Such organization would resemble that of the Harvard overseers with four ministers and four councillors balancing the interests of church and state. The New Jersey ministers, however, objected strongly to ex officio membership of the magistrates. They did not object to Belcher personally, but they could not be sure of his successors. Finally agreement was reached on a compromise which placed the governor ex officio on the board as its presiding officer, but named the four councillors as individuals only.

The new charter enlarged the board of trustees from nine ministers and three laymen to twelve ministers, ten laymen, and the governor. Compared to the first charter the 1748 document gave greater emphasis to secular and intercolonial representation by more than doubling lay members through the inclusion of the New Jersey governor, his council, and three prominent Pennsylvanians, among them the colony's chief justice. These men served in addition to the three New Yorkers appointed under the first charter. The inclusion of the college president on the board elevated him from the position of academy headmaster to one comparable to that of the presidents of other colonial colleges. In this and other ways Belcher helped bring the new college more in line with its sister institutions. Though there were magistrates of two colonies on the board, the designation of the New Jersey governor as presiding officer and the requirement of the presence of at least twelve New Jersey board members underlined the institution's recognition and function as New Jersey's provincial college. Much to the dismay of many college backers this official status translated itself neither into legislative offers of funds nor even into an authorization for a colonial lottery. For its finances the college had to rely on gifts from its friends, on lotteries conducted outside of New Jersey, and on fund-raising efforts among English dissenters and among Presbyterians in Scotland and in Ulster. As representatives of public authority the New Jersey governor and councilmen confined themselves to protecting the interests of the college and to see to it that it would serve without either discrimination or favor young men and boys of diverse protestant denominations from New Jersey and neighboring colonies.

In New York the arguments over college founding were to arise over the meaning of toleration. Could this English policy continue to grant preferential treatment to the Anglicans, or should it, given the religious diversity of New York's population, be applied evenhandedly to Protestants of all denominations? In the late forties little of this disupte was heard. Neither the city's Anglicans nor their secular-minded opponents had any use for the enthusiastic propagators of the Great Awakening. The dour presbyterian orthodoxy of President Clap at Yale also was not to their liking. When in 1746 and 1748 lotteries were authorized for a college by the legislature there was hope that such an institution should bring prestige, wealth, and political stability to the province by training future civil and ecclesiastical officers. William Livingston, reared in the Dutch Reformed Church of Albany and a 1741 graduate of Yale, wrote in a 1749 pamphlet that a college would "demolish enthusiasm and superstition," vice, drunkenness, and vandalism, and would "cause a surprising alteration in the behavior of our young gentry." Samuel Johnson, then an Anglican missionary in Connecticut, expected the college to revitalize the colony's political, social, and economic life. An anonymous contributor to the New York Evening Post in 1747 proposed a board of trustees similar to Harvard's overseers of magistrates and ministers with private persons added. There was agreement in the city that the new institution was to be neither an academy under denominational control nor a college with an incorporated faculty.

When in November of 1751 the legislature established a board of trustees for the lottery funds they appointed the colony's senior councilor, the speaker of the assembly, the judges of the Supreme Court, the mayor of New York City, the colony's treasurer, and Messrs. James Livingston, Benjamin Nicoll, and William Livingston. All three of the named members were lawyers; all of the office holders and Benjamin Nicoll, the step-son of Samuel Johnson, were active members of the Anglican church. The board reflected accurately the realities of New York's political life in which Anglicans exerted an influence quite out of proportion to their number. For these board members to claim a strong voice in the affairs of the projected college was but to follow traditional models already in force in Massachusetts, Virginia, and Connecticut. The New York college was to be a provincial institution under the guidance of the established authorities of church and state.

But Anglican preponderance among the lottery trustees created uneasiness among non-Anglicans. Their sentiments found expression in a series of letters which appeared in the spring of 1753 in William Livingston's Independent Reflector. Livingston and three collaborators, all like him Yale graduates, vowed to fight any Anglican influence over the college. The four men believed that the connection of Anglican Church and Crown spelled possible tyranny, and they championed the Assembly as the defender of the people's liberties. Early in 1753 Livingston outlined their program and the essays to come in the Reflector in a letter to another Yale friend. If the New York college were to fall under the management of churchmen, wrote Livingston, the consequence will be "universal priestcraft and bigotry in less than half a century." He complained that the men proposed as trustees were all Anglicans "and many of them the most implicit bigots" at that. He continued:

> The Church can assign no color of reason to have the direction of the affair in preference of any other sect, but I would not have it managed by any sect. For that reason I would have no charter foom the Crown but an act of Assembly for the purpose. Nor, for the same reason should divinity be taught at college because whoever is in the chair will obtrude his own notions for theology. Let the students follow their own inclinations

> in the study of divinity and read what books they please in their chambers or apply themselves to it after they leave the college. Their religious exercises should consist of reading the Scriptures, and hearing a prayer in which all Protestants may join.

Livingston's program constituted the first sustained argument against the English policy of toleration. Toleration, he reasoned, was unworkable and infeasible. In moving away from the Reformation triad of established church, state, and college one could not stop halfway and assign to one particular church or denomination the ownership or government of a college and oblige this particular religious group to "tolerate" the presence and religious rights of other Protestants. Foreshadowing arguments to be heard in New York in the 1840's Livingston asserted that there could be no such thing as non-denominational or non-sectarian religious instruction. Neither government by a religious group nor religious instruction were possible alternatives in a college intended to serve the interests of a religiously and ethnically heterogeneous society. Only a secular college with no official religious ties or preferences of any sort would do.

The counterpart to the Reflector -- at least in the eyes of New York Anglicans -- was A General Idea of the College of Mirania, a small volume published by William Smith, a recent immigrant from Scotland and later to become provost of the College of Philadelphia. Smith fully agreed with Livingston that as diverse a population as New York's needed public institutions to counteract centrifugal tendencies.

> Nothing [he wrote] could so much contribute to make such a mixture of people coalesce and unite in one common interest as the common education of all the youth at the same public schools under the eye of the civil authority.

The government should suppress private schools and see to it "that youth, who are the property of the state, ...be educated according to the intention of the state..." But unlike Livingston Smith assigned part of this educational task to the established church. The Anglicans, he thought, might well furnish ritual and order of religious services in the college as well as the president, as long as the latter would not also serve as parish minister. Smith thus clung to the English idea of preferment for an officially established church. He and other Anglicans like Samuel Seabury and Samuel Johnson thought Livingston's notion of equal toleration of all denominations and churches preposterous. As Seabury put it, it was impossible to agree on "a scheme of public worship for our college which shall not be liable to all the confusions in the building of Babel." Only the Church of England, he opined, was disinterested enough to furnish an acceptable kind of worship. Smith protested the "unbridled liberty of conscience" and proclaimed the impossibility of governing when the incentive of preferment and the threat of disestablishment were removed.

The heart of the issue between Livingston and Smith thus was their understanding of the policy of toleration. Their dispute centered on the question whether or not it was possible to have non-denominational worship and religious instruction in an institution intended to serve all members of the population. For Smith there could be no such thing as equal toleration; toleration had to be wedded to preferment. For Livingston, to whom preferment was anathema, equal toleration could be achieved and guaranteed only under secular public auspices. In 1754, however, the Anglican point of view prevailed. King's College obtained a royal charter which provided for an Anglican president and worship services according to the prayer book of the Church of England.

As the sixties began the issues were unresolved in Connecticut and would in time lead to a dramatic confrontation and anti-climactic denouement. In New Jersey toleration appeared to be working to everyone's satisfaction, and in New York the Anglicans had come to enjoy their preferred position. If further struggles lay ahead they would most likely be fought in the political rather than in the ecclesiastical arena.College affairs were becoming very much a matter of politics.

12. From Toleration to Secularization and Reaction: The Colleges in New York, Philadelphia, Connecticut, Rhode Island and New Jersey *)

As the Great Awakening receded from the consciousness of the colonists the struggles over college government began to be expressed in political rather than denominational terms. In New York Livingston had proposed the most radically secular college charter which left no room for any denominational representation. While Livingston's charter was not adopted, actual college government in Philadelphia had come as close to Livingston's ideal as colonial conditions would permit. In Connecticut the struggle for secularization reached its most traumatic confrontations and disturbances in the closing years of Clap's presidency. In Rhode Island a reverse movement towards reliance on denominational interests without governmental participation manifested

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*) Documentation for parts of this section may be found in my "From Religion to Politics: Debates and Confrontations over American College Governance in the Mid-Eighteenth Century," _Harvard Educational Review_, XLVI (August, 1976), 413-421, "The Charter for a Proposed College in Newport, Rhode Island: A Chapter in the History of Eighteenth Century Higher Education in America," _Newport History_, XLIX (Spring, 1976), 25-49, and "The Eighteenth Century Origins of the Split Between Private and Public Higher Education in the United States," _History of Education Quarterly_, XV (Fall, 1975), 273-280.

itself. It led to an early attempt of creating a second college as an alternative to the provincial College of Rhode Island. Ezra Stiles sought to accomplish this goal through inter-denominational agreement without legislative supervision. But the project came to naught. In New Jersey, on the other hand, the establishment of Queen's College for the Dutch Reformed for the first time broke the monopoly of a provincial college. Here the forerunner of the independent or private colleges of the nineteenth century developed side by side with the provincial college at Princeton. In all of these cases the way the controversies were handled indicated a growing polarization between state and church and a dissolution of the earlier state-church connection.

The model for a secular college charter had been presented by Livingston in New York in 1754. The Provincial College of New York was to be a "public college or seminary" administered by its president and trustees under close oversight of the provincial government. The corporation was to be a mere agency of the government. It was to obtain the consent of governor, council, and assembly for any grant or sale of college property and for the appointment of college officers. It was to submit to the three branches of government their annual financial reports, bylaws, and other records as well as their plan of instruction and the forms of non-denominational worship. The government reserved to itself the right to fix the location of the college and to fill any vacant seat of the twenty-four trustees. During Assembly recess a majority of the trustees might make temporary appointments of president and treasurer, but these had to be confirmed by the legislature at its next session. As one might expect, the bill made express provisions against religious tests for officers, teachers, or students and prohibited religious discrimination of any sort against any Protestant. There was to be no public instruction in divinity, but both the Anglican and the Dutch Reformed church of New York were to be allowed the election of a professor divinity who might then privately instruct those students who desired it. The bill gave students and officers the right to sue president, trustees, and college officers "in any court of law within this colony." With this bill Livingston had mounted the most radical challenge to college governance yet devised in the colonies. He had brushed aside English notions of collegiate autonomy as well as the Reformation concept of joint church-state-college establishment and its modifications as evolved in New Jersey and proposed for King's College. He had also emancipated, as it were, both students and officers from their total submission to college authority which Clap had enforced at Yale. Clearly, Livingston's bill represented a novel departure. His college, had it ever seen the light of day, would have been a state institution in every way.

Livingston's projected college had been planned deliberately to exclude denominational interests. In Philadelphia at about the same time an actual college had come into existence as a product nearly entirely of secular interests. While it served as a provincial rather than a municipal institution, it was nonetheless closely tied to the interests of Philadelphia's merchants. In 1749 a group of prominent Philadelphians had sponsored a subscription campaign for a "public academy in the City of Philadelphia." The twenty-four largest subscribers functioned as trustees. Eight were wealthy merchants, four well-known physicians, and many of the others -- among them Benjamin Franklin -- active in the political life of the city and the colony. Like the trustees of such English grammar schools as St. Paul's and Merchant Taylors they were laymen who served as stewards of a public trust. They insisted that with regard to the admission of students to the academy they would exclude considerations of "sect or party." George Whitefield, the famed English revivalist of the Great Awakening, sensed correctly that the trustees had not contemplated placing the doctrines of Christianity at the school's center, and he complained to Franklin that "there wants aliquid Christi in it, to make it useful as I would desire it might be." To be sure, the majority of the trustees were Anglicans and parishioners of Philadelphia's Christ Church, and Franklin preferred Anglicans to Presbyterians precisely because he did not cherish the latter's "narrow" and strife-ridden denomination. But as trustees these men acted as laymen and prominent citizens, not as representatives of a religious denomination or church. Their concern was public and secular, not private and religious or ecclesiastical.

But even with such secular credentials the College of Philadelphia could not quite avoid being drawn into denominational controversies. The school was incorporated as a college in 1755 with a charter drawn up jointly by William Smith and Francis Alison. The former was made the college provost and the latter vice-provost and rector of the academy. This alliance of Anglican priest and old-side presbyterian minister was meant to underscore the non-denominational character of the college and, at the same time, distinguish the school clearly from the new-light College of New Jersey. But Smith was rarely reluctant to engage in denominational infighting, and in 1756 he confided happily to an Anglican correspondent in England that "the Church, by soft and easy means, daily gains ground in it [the college] ..." So much so did denominational jealousies enter the picture that in 1764 the Archbishop of Canterbury, the proprietors of the colony, and a representative of English dissenters recommended in a joint letter to the trustees that they make "some fundamental rule or declaration to prevent inconveniences..." The trustees promptly adopted the letter from England as their own official policy declaration. Whether they did so out of genuine commitment to interdenominational cooperation or in obedience ot English policy or simply in hope thereby to avoid the kind of deadlock that had bedeviled the college founders in New York is hard to ascertain. It is clear, however, that the Philadelphia trustees sought to give as little cause for religious resentment as possible. They were happy that they had avoided from the very beginning a clear-cut identification of the college with a particular church, and they were not eager to invite difficulties over religious questions.

The difficulties that beset the Philadelphia trustees were mainly of a political nature. They derived, by and large, from the constant threat of Indian warfare at the province's frontiers, from the resulting feud between the heavily Quaker-dominated assembly and the proprietors' allies, and from the corresponding clashing sympathies in their own body over the provost's activities in support of the proprietary party. In 1756 Smith was accused of having violated the trust of his office by partisan indoctrination of his students, but both trustees and students absolved him of the charge. The students testified that he never had introduced "any thing relating to the parties now subsisting in this province, or tending to persuade us to adopt the principles of one side more than another." When two years later the assembly found the provost to be in contempt, the trustees again came to his support and authorized him to teach his classes in jail where he had been confined by order of the assembly. At the end of the year they gave him leave to go to England and present his case before the Crown.

Late in 1758 attacks came from a different direction. Pennsylvanicus, an anonymous writer in the Pennsylvania Journal, attacked Smith for having written political pamphlets and charged the trustees as well as ministers and magistrates of Philadelphia for having permitted a lottery for the college. Faculty members wanted to reply in the press, but the trustees vetoed that proposal. It was undignified, they argued, to respond to "low creatures who wrote from passion and resentment... ' Pennsylvanicus, however, returned to the attack, condemmned the college charter as "narrow" and "confined," the trustees as mesmerized by unlimited power, and, in a manner reminiscent of the Reflector in New York four years earlier, called for a new charter "more safe and generous" than the old. The passions of political warfare had come to engulf the College of Philadelphia just as juch as in preceding decades the emotions unleashed by the Awakening had rocked the colleges of other colonies. As the sixties approached religious disputes gave way to political ones.

It was then in Connecticut that the most dramatic confrontation over the issue of college governance took place in colonial politics. When Clap terminated Yale's relationship to the First Church of New Haven, ordered the sons of Anglicans not to attend near-by services, and in 1757 established the college church,he fueled the suspicions and ill will of the Connecticut assembly. In 1755 they refused the annual £100 grant to the college. One of its members, Dr. Benjamin Gale, physician and deputy from Killingworth, vigorously rejected Clap's statement that Yale had been founded "principally by the ministers." He accused the president of falsely claiming that the assembly had been "neither the founder nor visitor of that house," and he disputed the legal status of the college as a corporation. He also rejected Clap's contention, derived from the canon law, that Yale College was an ecclesiastical corporation. Gale and the legislators insisted on the accountability of the college officers and governors to the public. In striking similarity to Livingston's arguments in New York and to the views of the anti-proprietary party in Philadelphia, he asserted the legislature's right to oversight and visitation.

By 1761 disciplinary action taken by the corporation against some students brought forth a protest memorial from Connecticut citizens who urged the legislature

> to turn your eyes upon the society that you have founded, fed, and nourished, and for the honor of what is good, great, and noble, subject it to such like visitation as other collegiate schools in this land or devise some method of redress.

Again, the college escaped such action as the General Court "resolved in the negative." But matters went from bad to worse. By November of 1762 open student rebellion engulfed the college, and the corporation fought back by rusticating and expelling students and placing others on probation. In the following spring more protest memorials reached the assembly. They spoke of the college's "deplorable state," of "notorious" facts, of the uneasiness of students and parents, and of "the resentments and prejudices the youth generally bring from thence..." They charged that the college law forbidding students and faculty to take complaints against the college to a civil court violated "the natural rights of Englishmen." The college, they wrote, was "an imperium in imperio, as shall be rather dangerous than serviceable to the community." Their many and specific complaints all led to one chief demand: The legislature was to appoint a commission of visitation. Such action would raise the key question and bring it to a decision: To what extent was a college a law to itself, and to what degree must it allow itself to be governed by the wider body politic which had authorized and supported it?

The confrontation over the question of college autonomy vs. the legislature's right to visitation took place on Sunday, May 15, 1763. Before the General Court Clap answered the charges brought against his rule by the various memorials and concentrated his attention on the two chief demands: visitation by the General Court and the Students' right to appeal from the disciplinary rulings of the corporation to governor and council. In a brilliant disquisition, filled with learned references to English law, Clap maintained that though the assembly held a general supervisory authority over all institutions of the province, it did not have the right to visitation over the college. He based his conclusion on a contention -- doubtful, to be sure, but not contradicted in 1763 -- that the ministers had founded the college before it had been chartered by the General Court. On the question of appeal Clap remained equally adamant. An appeal to authorities outside the college "would occasion a great delay in government and mispence sic of time." The same disadvantage of "a great expense of time and money and ... many mischiefs and confusions" would result, Clap held, if students were allowed to sue each other or the college officers in court. On all other points, too, Clap did not budge.

Clap's intransigence was not just bravado or the result of confidence in his considerable legal knowledge. He saw correctly that visitation and appeal were issues inextricably linked, and that the question of appeal could be sued to put the General Court on the defensive. Should the Court decide on visitation or permit students to appeal Clap's disciplinary judgments to the governor, Clap warned the legislators, the college might file a complaint with the Crown authorities in London. Don't encourage the students to appeal from my jurisdiction to the governor and council, Clap seemed to be saying, lest you suggest that I appeal from the colony's court to King and Parliament. Order a visitation of the college by the assembly, and you open the door to visitors from England appearing in Connecticut "with fullpower in themselves to redress everything in our laws or courts which they might esteem to be abuses..." The risk of royal interference in Connecticut affairs may have been small in 1763, but it was nonetheless a risk, and Clap craftily and successfully made the most of it. On May 15, 1763, the General Court conceded defeat. In his 1766 Annals of Yale College Clap allowed himself the luxury of reporting his own triumph:

> When the arguments were considered by the Honorable the Great Assembly but very few appeared to be of the opinion that the Assembly were the founders of the College, and so they acted nothing upon the memorial. And it is generally supposed that the question never will be publicly moved again.

As it turned out Clap was wrong in his guess for the future, but in 1763 he was the man of the hour, and the victory was his.

In the light of Yale's subsequent history, however, the confrontation of 1763 constituted at best the battle which, while won, signalled the turning point in a war that was about to be lost. As other historians have pointed out, it was the students who accomplished what the legislature had been unable to, and they brought down Clap's administration in utter ruin a few years later. But more was involved than student high jinks or adolescent rebelliousness directed against an obstinate old man. Behind the students stood their parents and, with them, the people of Connecticut. Gale and the memorialists expressed sentiments that enjoyed wide currency beyond the immediate vicinity of the college and even the colony. When they objected to Clap barring the students' access to the courts and to his charging them for erecting college buildings, they referred to the natural rights of Englishmen and spoke of taxation without representation. Demanding visitation by the assembly they echoed Livingston's call in New York for a public college under the direction of the legislature and Pennsylvanicus' quest for a broader and more generous charter for the College of Philadelphia. They clearly indicated their belief that the assumed right of the Fellows to self-visitation was anachronistic. Clap's manner and measures did nothing to help dispel the aura of autocracy surrounding him and it is difficult to agree with those who have argued that Clap's defiance of the memorialists constituted a victory for academic freedom. It was quite the opposite, a victory for the concept of a college as a sectarian seminary and of college governance as paternal absolutism.

Neither of Clap's concepts blended in well with the prevailing temper of the time, and it was but a matter of months and years until his world came to grief. In February of 1766 the students accused Clap of being in his dotage and showing arbitrariness and partiality. They demanded his ouster. When the corporation failed to act on their petition, they tore up college buildings, burnt boards and furniture, threatened the tutors with bodily harm and drove them out of the college. In July Clap offered his resignation which the corporation accepted to be effective at commencement in September. With the college nearly in ruins, the Clap regime had come to its end.

Now matters changed quickly. The assembly asserted its oversight and ordered the corporation to submit its account annually if it wanted to receive any funds from the General Court. Benjamin Gale and his friends had won after all. In a letter to Ezra Stiles, then a minister in Newport, Gale wrote proudly of "our gentle visitation of Yale College, in which we touch'd them so gently, that till some time after the assembly, they never saw they were taken in, that we had made ourselves visitors, and subjected them to an annual visitation..." Gale could feel satisfied. Everything Clap had resisted, with the sole exception of the students' right of appeal, had now been accepted. Most of the vestiges of Clap's autocratic reign had been overcome. The Legislature's general oversight and right to visitation had been affirmed. Clap's myth of Yale as a religious seminary had been laid to rest, and the school was acknowledged again as Connecticut's provincial college.

The struggle over denominational influence in the colonial colleges did not always erupt in legal or physical confrontations or end in the assertion of legislative authority. A different example may be found in Rhode Island. Here representatives of the denominations themselves sought to bring to reality a policy of applied equal toleration which, as an eighteenth-century expression of "affirmative action," expressed a concern for equity and unity in a demographically heterogeneous society. The policy grew out of the concerns and activities of Ezra Stiles, Yale graduate and, in 1770, in his fifteenth year as minister of Newport's Second Congregational Church. As early as 1761 Stiles had talked about plans for a school in Rhode Island with William Ellery, Jr., a lawyer, member of his congregation, and a Harvard graduate, and with Josias Lyndon, a Newport Baptist. Two years later their discussions were accelerated when it became known that the Philadelphia Baptist Association was planning a college under Baptist sponsor in Rhode Island. The association, making use of the already existing friendship of Stiles, Ellery, and Lyndon, then agreed to commission a charter, and asked Stiles to prepare the draft. It appears to have been the understanding of the association, as James Manning, their representative to Rhode Island, wrote, "that the Baptists were to have the lead in the institution and the government thereof forever; and that no more of other denominations were to be admitted than would be consistent with that." Ellery seemed to corroborate that view by reporting an agreement among Congregationalists and Baptists:

> First, that the corporation shall consist of two distinct branches by the name of trustees and fellows. 2d. That in the former the Baptists and in the latter, the Congregationalists should forever have the majority's specified in the charter. 3d. That the election of president should always be in the trustees and that they should have the negative and control upon all the nomination of officers and upon the laws proposed by the fellows and in short that they should have a disallowance on every proposal of every kind made to them by the other branch.

With these injunctions before him Stiles and Ellery set to work to prepare a charter that would, as nearly as possible, combine the demand for Baptist control with the ideal of inter-denominational cooperation.

It should be clear to anyone that Stiles and Ellery faced a difficult task at best, and the outcome of their labors proved their failure. Under the restrictions imposed upon them they might have hoped for a successful appeal to the willingness of the denominations to cooperate with one another, but they could neither promise nor grant them equality in that cooperation. In each branch of the corporation they were obliged to give preeminence to either the Baptists or the Congregationalists but not to the same in both, and they had to make sure that the Baptists controlled the more powerful branch. This, then, prescribed a system of graduated power from the Baptists to the Congregationalists to the other denominations. There was not to be a balanced distribution of power such as Stiles might have preferred. Of the thirty-five seats on the board of trustees they therefore assigned nineteen to the Baptists, seven to the Congregationalists, five to the Quakers, and four to the Episcopaleans, thus giving the Baptists a majority of three. Of the twelve fellows, eight were to be Congregationalists, and four could come from "any and all" denominations. Stiles and Ellery also observed the agreed upon specifications on the reserved powers to the two boards. While all acts of the corporation needed the concurrence of both boards, the conferring of academic degrees was left to the fellows, and the election of a president was given to the trustees. The fellows could nominate all officers except the president and they could prepare the college laws. But confirmation of officers and laws belonged to the trustees. In permitting the fellowship to consist entirely of Congregationalists, however, the drafters had created one small occasion where the two major denominations might be balanced. Should the trustees ever elect a Congregationalist as a president, then it was possible that all twelve fellows -- of whom the President was required to be one -- together with the seven Congregationalists on the board of trustees equalled in number the nineteen Baptist trustees. But giving the trustees the right to elect the president made this eventuality highly unlikely and, at the same time, assured the Baptists of a decided advantage. But the Baptists and their sympathizers in the assembly did not see it that way. They pointed out that under Stiles' and Ellery's wording the fellowship could be without any Baptists, and quickly accused the petitioners of "treachery." They brought the proceedings on the charter to a halt in the assembly in the summer session of 1763, and finally succeeded with the adoption of an amended charter in the spring of 1764. While this was still basically the charter initially drafted by Stiles and Ellery, it had been changed in several important particulars.

If the 1763 draft had not been entirely to Stiles' liking, the 1764 document was even less so. The trustees, now consisting of thirty-six members, had twenty-two Baptists, four Congregationalists, five Quakers and five Episcopaleans, thus raising the Baptist majority on the board from three to eight. Among the twelve fellows a switch had taken place from eight Congregationalists to eight Baptists, leaving the four remaining members as before to be picked "indifferently from any or all denominations." Now far from reaching a balance between Baptists and Congregationalists, the Baptist majority over the Congregationalists could range from as high as thirty to a low of twenty-two -- in each case assuring an overwhelming predominance of Baptists over any one other denomination. In addition the 1764 charter also prescribed that the president had always to be a member of the Baptist denomination. Stiles had good reason to feel hurt and aggrieved. In September of 1763 he complained that the Baptists "desert their junction with the Congregationalists and engross all the power in the proposed Rhode Island

College to themselves, after they had agreed to share the balances with us." While the college corporation was anxious to pour balm on Stiles' wounds and twice offered him a seat on the fellowship, Stiles politely declined. He wished the college well, he wrote, and based his refusal to serve on reasons which he did not name but which, he maintained, "however they may justly influence Congregationalists in general, ought not *now* to have any weight with you *as a body*."

The College of Rhode Island, in the meantime, had begun its daily operations on September 3, 1765, when its first students matriculated at the parsonage in Warren. The next day Warren's minister, the Rev. Mr. James Manning, was elected as the college's first president. Between them and 1770 twenty-eight students followed the example set by their solitary predecessor on September 3. The year 1769 witnessed the first commencement when the new college awarded seven bachelor of arts degrees, ten master of arts degrees to graduates of other colleges, and eleven honorary master of arts degrees. The excitement of commencement and the obvious crowded environs of the Warren parsonage and church then kicked off a vigorous debate and contest over a new site for the college, with the towns of Providence and Newport being the chief contenders. When on February 8, 1770, the college corporation took its final vote Providence emerged as the winner.

The college promoters in Newport did not take their defeat easily. Only two weeks after the college corporation had decided in favor of Providence Stiles reported in his diary a visit of his friend Ellery. Ellery had come, Stiles wrote, "to discourse about the charter of another college, on the plan of equal liberty to Congregationalists, Baptists, Episcopaleans, Quakers." The proposal gratified Stiles greatly since it was based on the principles of interdenominational cooperation and Christian unity, and, unlike the College of Rhode Island charter, did not put its supporters under an obligation to give precedence or greater privileges to any one particular denomination. The 1770 draft charter followed paragraph by paragraph with only minor modifications in wording the provisions of the 1764 charter of the College of Rhode Island.

The charter's major innovations come into focus as we look at the provisions for a college corporation of forty-nine members divided into forty trustees and nine fellows, with the president of the college being one of the fellows. Trustees and fellows were to sit as one board, with the president as moderator having a casting vote. The Newport draft thus did away with the "distinct, separate, and respective powers" of the two boards in the College of Rhode Island charter and with the concomitant necessity for concurrence for acts of the corporation to be valid. This was probably no more than a tacit recognition of the procedures adopted by the corporation of the College of Rhode Island. The members had found it impractical to meet in separate sessions and by 1769 had come to ignore that charter provision. In the Newport draft it was therefore the corporation, not the fellowship with the subsequent assent of the trustees, which had the power to make laws, statutes, and ordinances for the government of the college. More important, however were the clauses regulating the composition of the corporation: Ten of the trustees and two of the fellows each were to come from one of the four named denominations: The Church of England, the Friends, the Baptists, and the Congregationalists. Their numerical relationship among each other was to be fixed and to remain "to perpetuity immutably the same," the president always to be counted as one of the fellows. By imposing numerical equality among the four denominations on the governing board Ellery and Stiles hoped to overcome the dissatisfactions and inequities inherent in the traditional toleration with preferment scheme adopted by the Baptists at the Colllge of Rhode Island.

It was, however, in the election and removal from office of president, professors and tutors by the corporation that Ellery and Stiles broke new ground in the totally novel manner. In order to insure fairness they assigned by lot the president's choice to one of the four denominations represented on the corporation, and provided further that for any subsequent election a lot should be drawn among the denominations not yet having furnished a president. This system was to continue until each denomination had supplied a president, and the order of rotation established by lot would thereafter have to be observed. Stiles and Ellery applied the same system also to the choice of professors and tutors, provided, however, that the first tutor should not be of the same denomination as the president, but be chosen by lot from among the other denominations. Like the charter of the College of Rhode Island, the Newport charter made misdemeanor, incapacity, or unfaithfulness of president and instructors valid grounds for their removal. It also applied the same penalty to president and teachers as well as to the members of the corporation if anyone of them were to change his denominational affiliation. Any office in the government and on the faculty of the college thus depended on initial as well as continuing membership in the denomination which, at the time of entry to the office, had held the right to such election. But the Newport charter went one step farther. It disqualified president, professors, tutors,and other officers of instruction from their office if

> any or either of them shall exercise the function or office of a clergyman, minister or pastor, or the office of an elder or instructor in any relgiious society or congregation whatever, by either statedly preaching or praying or at any time administering the ordinance of baptism or the Lords Supper, or shall for occasionally preaching or praying receive any stiped salary, reward or secular consideration whatever from any funds, revenues, society or congregation or private person or persons for his or their so occasionally preaching or praying...

By introducing lot and rotation, prohibiting by pain of dismissal change in denominational affiliation and acceptance of regular or occasional paid duties as a minister, the two charter drafters so sought to make as nearly impossible as they could the capture of the proposed college by the representatives of a particular denomination. To this end they devised their novel propositions.

Despite the speed and earnestness with which Ellery and Stiles had submitted their proposal to the February session of the Rhode Island legislature, they failed to gain acceptance for it. Less than a week after their conference the lower house resolved on March 1 to grant and send to the upper house "the petition for granting a charter for a college and academy in the town of Newport." On the next day the upper house referred the bill to the session which was to open on May 2, but before the matter could be taken up again, the corporation of the College of Rhode Island had become alarmed.

On April 25 they petitioned the legislature to reject the application for the charter of another college. They prepared a remonstrance in which they claimed that the College of Rhode Island had been erected "for the education of youth ... to be effected chiefly, if not altogether, by the application, and at the cost and expense of the Baptist churches." In this college, the corporation wrote, "the youth of every denomination of Christians are fully entitled to, and actually enjoy, equal advantages in every respect, as the Baptists themselves, without being burdened with any religious test or constraint whatsoever." The members of the corporation then expressed their anxiety over the possibility of a second college being chartered by the Assembly, and in an unusually explicit and direct manner stated the argument for preserving their college monopoly:

> Permit us therefore to remonstrate, that, as we had firm reliance on the lasting faith and credit of the legislative body of the colony of Rhode Island, that faith

> and credit hath by us as a corporation been asserted and pledged, in most parts of England and Ireland, and in many parts of America; and, on that foundation large sums of money have been given, and more subscribed, toward this institution. That, should a charter be granted for erecting another corporation of the same kind in this colony, all those who have been benefactors to this will think themselves deluded and deceived; notwithstanding we have acted under the faith of the government; and all those that hereafter might become benefactos will be discouraged and hindered. That, the granting of our charter, being for erecting and endowing a college in the colony of Rhode Island, must, rational and justly, be considered as exclusive of any other college being erected within it.

The protest of the corporation followed the same basic argument employed by the Harvard overseers in their memorial of 1762 against the establishment of a college in western Massachusetts. Harvard, the overseers had written, was"properly the college of the government," and for a second college to be established "exactly, or nearly upon the same footing with that at Cambridge ... would not only be quite unnecessary, but really prejudicial to Harvard College." It was prejudicial because it would make Harvard lose potential and existing benefactos, and because the "multiplying of colleges without having a single one well endowed" would set a precedent of "pernicious consequences." As in Massachusetts eight years earlier, in Rhode Island, too, the legislature listened to the pleas of its provincial college. No word appears of the Newport college in the legislative records of the May session. The Stiles-Ellery proposal for a college under an equal toleration charter was dead.

The last alternative chosen by college promoters unhappy with the toleration and preferment scheme or with secular direction was to escape legislative direction altogether by founding a college independent of provincial legislature and religious establishment. Such institution then was an alternative school competing for students with the established provincial college. It was also, we know by hindsight, the forerunner of what became in the nineteenth century the independent or private college. This development began in October of 1754 when the Dutch Reformed Church of New York petitioned the assembly to allow them a professor of divintiy at King's College. They argued that they constituted "the greatest number of any single denomination of Christians in this province." In May of the next year Domine John Ritzema, prominent leader of the conservative wing of the Dutch church and a member of the board of governors of King's College, on his own initiative moved the college board to apply to New York's governor for an additional charter containing the professorship. When this was granted Ritzema was repudiated by his consistory. The charter, they charged, had been "prepared incontestably without our knowledge, advice, or counsel" and did not answer "to our conception of what would be advantageous for the upbuilding of our church..."

Ritzema correctly felt that the opposition to him came from members of his church who sought a college of their own to be opened in the middle colonies. The main power behind this move was Theodore Frelinghuysen who, in attacking Ritzema, had expressed his amazement "at the astonishing imposition of the encroaching party [the Anglicans] that would monopolize our intended college" and at "our own infatuation, stupidity, and lethargy" which had allowed Ritzema's project to proceed unhindered. He did not believe in uniting with other denominations or churches in college efforts and concluded: "We have no business with their colleges; they may erect as many as they please, and must expect to maintain them too, themselves. Let every one provide for his own house."

Frelinghuysen's appeal in 1756 expressed the disenchantment of a growing number of Americans with the task of coping with diversity. The game, Frelinghuysen seemed to say, was not worth the candle. Perhaps the Dutch could afford such sentiment as they had the numbers to build their own house; perhaps. also, Frelinghuysen was simply tired of the bickering and impatient with the slow process of seeking accommodation and obtaining cooperation. No matter how approached or understood, the English policy of toleration was difficult to translate into actuality in the pluralistic society of the colonies. Frelinghuysen's suggestion bore fruit ten years later when Queen's College, later to be known as Rutgers, broke with the tradition of a provincial college monopoly, and was established in New Jersey to serve the Dutch Reformed churches of the middle colonies. This collegiate foundation was the first to mark the transition from the provincial colleges of the seventeenth and eighteenth centuries to the private institutions of the nineteenth.

After the Revolution the pattern set in New Jersey became familiar in other states as well, In Virginia a presbyterian academy, originally founded in 1776 as an alternative to the Anglican College of William and Mary, was incorporated as Hampden-Sydney College in 1783. A second newcomer appeared in 1782 as the degree-granting Liberty Hall Academy. It, too, had been founded by Presbyterians. These two schools challenged the monopoly of William and Mary, though, being presbyterian, they did not compete with the older college. Neither of them had public officials serving _ex officio_ on their boards, and when Liberty Hall was incorporated as a college in 1813 (it is today known as Washington and Lee University) both colleges constituted early examples of the nineteenth century American private college. But it wasn't until the 1830s and 1840s, as Tewksbury has shown, that the private denominational college came to flourish in large numbers. Then it nearly pre-empted the field and came to be viewed as _the_ prototypical American college.

As the Great Awakening receded from view and from memory and as the traditional partnership of state and established church had disappeared, legislatures and denominational groups separately came to sponsor colleges. For the future this development pressaged the separate emergence of the American state university as the successor to the provincial college and of the American private or independent college as successor to the first non-provincial colleges in New Jersey and Virginia.

13. The Twilight of the Provincial College

As the chartering of Queen's College and the unsuccessful attempt to establish a college in Newport showed, the age of the eighteenth century provincial college with its monopoly on a colony's higher education drew to a close. With the emergence of pluralistic forces in the religious life and ethnic composition of colonists in the second half of the century, the provincial college lost its favored place. By fomenting what Ezra Stiles called "college enthusiasm" the colonists increased the number of colleges while, at the same time, they undercut their status as "established" provincial institutions. Not only did the number of colleges triple between 1701 and the onset of the Revolution, but the momentum of expansion and inclusiveness eventually carried the colleges beyond their original expectations. In the 1770s the trustees of the College of Rhode Island breached the circle customarily drawn around Protestants and committed their college to the admission of "the children of Jews" who were "entirely [to] enjoy the freedom of their religion, without any constraint or imposition whatever." In its governmental arrangements also the colleges sought to contain the explosive potential for denominational strife by increased reliance on civil officials and by adherance to the policy of toleration. In two of the three colleges founded at mid-century the colonists included public officials _ex officio_ on the governing boards in order to insure fair and hospitable treatment of students and professors not of the majority denomination and to give all interested parties a means of influencing college policies. In addition the new colleges had been committed to non-discrimination by their charters. Such obligation was contained in the 1746 and 1748 charters of the College of New Jersey and the 1754 charter of King's. At the College of Philadelphia, where such a clause was lacking, it was adopted in 1764 by the trustees as a supplement to the charter. In these and other ways the shifting demography of the colonies necessitated a change in the position the provincial college.

Large as the numerical increase of colleges appeared to be in the decades before the outbreak of the Revolution, it did no more than to keep up proportionately with the increase of the colonial population. Between 1758 and 1771 nine attempts were made to obtain college charters. Of these only three succeeded: The College of Rhode Island, Queen's College in New Jersey, and Dartmouth College. Two of these were located in the older, settled areas, and only Dartmouth was established on the northern frontier. Of the six colleges that failed -- New Hampshire College, Queen's College in Massachusetts, Bethesda in Georgia, the College of Newport, South Carolina College, and Queen's College in North Carolina -- four had been projected for newly settled areas. In New England these foundations had been intended to compete with the monopolistic position of Massachusett's provincial college in Cambridge. Clearly, the more developed sections of the country held the upper hand in their ability to establish and nurture colleges. The frontier areas, being able to rally support only for Dartmouth College, remained poor cousins. The dependence of colleges on established population centers and their influence on legislation is illustrated also by the close numerical relationship of college graduates to the total colonial population. The number of degree recipients in 1700 was 15 with a total of 285 alive in that year. In 1790 these numbers stood at 199 and 4,163. But during these years the numbers of living college graduates per 10,000 of the colonial population only changed from 10.4 to 10.6. This small increase hardly demonstrates a widening base of college educated colonists. Ezra Stiles' "college enthusiasm" did little more than keep pace with the growth of the colonial population.

In law and constitutional arrangements as well as in matters of college governance the closing decades of the eighteenth century brought real change to American higher education. The provincial college gave way to the state university and the private, denominationally sponsored and funded college. Legislators came to ignore the argument that a college charter conferred on its possessor a monopoly of higher education in a province or state. They allowed state universities and denominational colleges to appear side by side and to compete for students and legislative support. The change was not to manifest itself on a massive scale until the nineteenth century. But it became visible first in the 1760s with the first signs of disorder and rebellion among students within the college walls and with the agitation over the Stamp Act without. Demands of outside critics for training and instruction in medicine and law soon follwed. The War for Independence brought interruptions and loss of life and property, and the Revolution offered occasions to the new state legislatures for altering college charters and creating new public institutions. In the re-formation of American higher education account was taken of religious pluralism and the needs of people at the fringes of settlements. Its advocates spoke of celebrating a popular consciousness of building a new nation and a republican society. By the 1780s the first new institutions had been born in the charter revisions in Philadelphia and New York. The eighteenth century college was about to disappear from the scene.

But before the provincial college actually disappeared from the scene and surviving institutions had to accomodate themselves to the existence of competing colleges or, during the Revolution, were transformed into state universities, Baptists and Congregationalists succeeded in the sixties to found provincial colleges in Rhode Island and New Hampshire. We have already described the circumstances which led to the opening to fhe College of Rhode Island in Providence. We can therefore turn our attention to the chartering of the ninth and last colonial college. This was Dartmouth College in New Hampshire. The institution had had its origin in the missionary labors of Eleazar Wheelock, a congregational minister and 1733 graduates of Yale. Under the impact of George Whitefield and the Great Awakening Wheelock had taken Indian boys into his parish home in Lebanon, Connecticut, to educate them as Christian missionaries and send them back to their tribes on the frontier. With the support of a local landowner, Col.Joshua

Moor, and several missionary societies Wheelock broadened his work in 1754 and organized it as Moor's Indian Charity School. In the early sixties he sought to obtain for the school a charter of incorporation from the Connecticut General Court. He was turned down, however, by the Upper House, apparently because of fears that the Charity School might compete with Yale University for white students. Needing funds for his growing academy Wheelock sent two emissaries to England from 1765 to 1768. They closed their successful drive with the organization of two trusts, one in England and one in America. The board in England was to continue receiving funds for the school, and the board in America was to manage the property and supervise the school. Just as these financial and administrative arrangements promised to give greater stability to Wheelock's enterprise, a rapid decline in Indian admissions set in, and the survival of the school under its original purpose appeared problematical

Wheelock had considered a re-organization and re-location of the school before. His inability to obtain a charter in Connecticut and the distance form the Indian territories were factors influencing his thinking. Also, other disappointments beset him. While by 1765 he had trained at Lebanon eight white students in addition to twenty-nine Indian boys and ten Indian girls, he faced growing competition for his missionary efforts from the Anglican Society for the Propagation of the Gospel. In 1766 President Myles Cooper of King's College had revived old plans for attracting Indian students to King's, and it soon became evident that Sir William Johnson, the Crown's Superintendent of Indian Affairs, preferred Anglican missionaries among the Indians. Despite his personal friendship with Wheelock, Johnson opposed the latter's influence as a dissenter. Then, too, many of Wheelock's Indian graduates ceased to work effectively as missionaries. This "most melancholy" experience persuaded Wheelock to try to admit a far larger proportion of white youths to his school. If they then were to take a more prominent place in the academy an incorporation of the enterprise as a college suggested itself. In 1771, after the incorporation as college had indeed taken place, James Manning, the president of the College of Rhode Island, expressed his misgivings over Wheelock's course when he wrote that the latter's project

> from what I can gather, ... is to be a grand Presbyterian college, instead of a school for the poor Indians. There were but two Indians there at school last fall, and they were Narragansetts from this colony [Rhode Island] , brought up like us... The money raised [in England] will be as greatly prostituted as ever the fund for propagating the gospel in foreign parts has been by another denomination of Christians.

Wheelock did little to prove these criticisms wrong. When in 1769 he and the English trustees had accepted an offer of land and of a charter from Governor John Wentworth of New Hampshire, Wheelock, as if an afterthought had just occured to him, added a postscript to a letter addressed to the governor. The postscript read:

"Sir, if you think proper to use the word college instead of academy I shall be well pleased with it." The governor, it turned out, thought it proper, and thus it happened that Moor's Indian Charity School of Lebanon, Connecticut, was transformed into Dartmouth College in the Province of New Hampshire. Both Wheelock and New Hampshire now had their college.

The charter issued by Governor Wentworth in the name of the King gave to the trustees of the new college a freer hand than Wheelock had dared hope. Not only was his institution now a college duly chartered by royal authority, but it was also removed from the supervision of the trustees in England. All that the charter required of the college with respect to the English trustees was that the president report the use of the funds received from England, annually or whenever requested, as long as the English trust existed and as there were Indian students at the college. The charitable trust thus was a legal entity distinct and different from the college. The charter defined the college's purpose as the education of Indian youths as well as English youth "and any others," and the training of a learned and orthodox ministry. The governing board followed the traditional joint mixture of magistrates and ministers. Among these were the Governor of New Hampshire, a member of the Connecticut Assembly, and Eleazar Wheelock, who was also named as the college president. State and church were equally represented, and the British policy of toleration was safeguarded by prohibiting discrimination on grounds of religion. The trustees were to have perpetual succession, and President Wheelock was granted the right to appoint his own successor. The trustees were declared responsible for the education and government of the students and for electing presidents -- except for Wheelock's immediate successor --, professors, tutors and all other college officers. They also had received the power of bestowing degrees "as are usually granted in either of the Universities or any other college in our realm of Great Britain ..." The charter furthermore prescribed that eight of the twelve trustees must be residents of New Hampshire, and that seven of these be laymen. Its origin as a missionary academy for the education of Indians notwithstanding Dartmouth College emerged in 1769 as a provincial institution with secular interests and clearly defined responsibilities toward the public.

Close relationships of Dartmouth College to the secular govenments of New Hampshire, Vermont, and the new confederation developed as the break with the English trustees became more apparent. Initially the trustees in England had protested the new arrangements. They complained rightly that few Indian students were continuing at Hanover, and that the disposal of their funds in New Hampshire had been taken out of their hands. It took all of Wheelock's powers of persuasion to keep them from dissolving the trust. He convinced them that he, and not the college trustees, could draw on the English funds and put them to the use of Moor's Indian Charity School. This he did with remarkable success in the next few years, although it was next to impossible for him or anyone else to be certain that only the Charity School and not the College was the beneficiary.

From 1770 to 1774 Wheelock drew £6467 sterling, and then was notified that the fund had been exhausted. In fact the trustees claimed that he had overdrawn the account by £500. For the results of this investment Wheelock could point to the educational record of the 1770s: Approximately forty Indians and 120 Whites had been educated at Hanover, constituting enough of a difference between Red and White to question the fidelity with which the trust funds had been expended. While in addition to the English funds there had come contributions from Scotland and from private donors in the colonies, by 1773 the college also had received £560 from the New Hampshire Assembly. The Assembly obviously felt some sort of responsibility for its college, and during the Revolution this public commitment to the college's work was even more strongly affirmed when the Continental Congress voted the college $500 each in 1775 and 1776 and $925 in 1778. The sums were to strengthen the college in its efforts of defending and pacifying the Indian frontier. In this work Dartmouth was successful. It was the only college which carried on its business without extensive interruptions during the Revolution, even though in 1777 its Indian students withdrew and there were none in attendance between 1785-1800. Further public support came from New Hampshire through the authorization of lotteries in 1784 and 1787, a grant of £361 in 1790, and a land grant in 1791. The state of Vermont, too, aided the college when in 1785 it gave 23,000 acres. At the century's end the college played the customary role of an incorporated institution serving as the province's training ground of future professionals, civil servants, and ministers. While there was never any doubt that Dartmouth College was run by Congregationalists, it was also evident that it served all the protestant denominations of the province. Dartmouth, like the College of Rhode Island, stood firmly on the toleration with preferment tradition of the eighteenth century.

The two new provincial college foundations in Rhode Island and in New Hampshire must be held in balance with attacks against the provincial college monopoly in three other colonies. With two of these -- those in New Jersey and in Rhode Island -- we are already familiar. The third had been the first in chronological sequence. It occurred in 1762 in western Massachusetts. It was the result of a general disaffection felt by small farmers and wealthy landowners and entrepreneurs alike from the dominance in Massachusetts politics and social life of the province's eastern section. For various reasons Harvard College was not a well reputed insttution in the Berkshires and along the Connecticut River. Westerners felt that their sons were discriminated against in the college "placing system" whereby all the members of a class were ranked by social origin and scholastic achievement. The system was ultimately given up in 1769, but seven years earlier it was still the cause of much unhappiness. Then there were the disadvantages of distance and of travel expense, and the suspicions of a predominantly rural and religiously orthodox population towards an urban, cosmopolitan, and religiously liberal community. The fifties and early sixties had brought reports of dissolute and riotous student behavior, and the people of western Massachusetts were ready for a college of their own in their neighborhood. They responded favorably to a suggestion to use the bequest of Ephraim Williams for "the support and maintenance of a free school" or "for schools on the frontier" as an appropriation for the founding of a college. Williams had stipulated that the school be located in the vicinity of what is now Williamstown and that this township fall within the boundaries of the Massachusetts Bay colony. Were these conditions to be met, it was clear that the college project [illegible] the deliberate creation of a second and competing college in the province. It would thus make evident that in shaping a colony's educational policy legislators would have to take into account not only diversity in the people's religious preferences -- a phenomenon familiar at least since the 1740s if not earlier -- but also a diversity based on sectional economic and social interests.

In January of 1762 a committee of seventy-four interested persons under the leadership of Israel Williams of Hatfield had a charter prepared for the proposed college. In this work they were assisted by William Smith, Jr., a New York lawyer and close friend of Williams. Smith had had long experience with college affairs. His father was a trustee of the College of New Jersey, and he himself had been a Yale graduate and one of the collaborating authors of the Independent Reflector during the battle with the Anglican supporters of King's College. Smith and Williams drew up a charter which stressed the increasing population in Hampshire and Berkshire counties and their distance from other existing New England colleges. They then announced the willingness of six laymen and six ministers "to found and endow a college or collegiate school within the said County of Hampshire," and asked that the twelve men and others be incorporated by royal letters patent as "the President and Fellows of Queen's College in New England." The corporation was to stand under the visitatorial authority of the Crown to be executed through the province governor. It had been modelled on the familiar Harvard pattern of magistrates and ministers. There were to be fourteen fellows and a president, and there should never be less than seven laymen serving as fellows. President and fellows were to serve as an external board, and to have the powers of making and altering statutes and laws and of appointing and setting salaries for a master, tutors, and other college officers. There was no reference to religious services and to the church membership of either president or fellows and teachers. We may assume that the juxtaposition of an orthodox Calvinist population with an Anglican governor and Crown as well as Smith's previous battle against the Anglicans in New York and persuaded the drafters to remain silent on this matter. The charter strikes the reader as a crafty document designed to provide protection for the orthodox Calvinists against what they saw as the liberal establishment by explicitly naming Crown and governor as visitors, and by omitting any and all references to religious affiliation of either governors, teachers, or students.

Smith and Williams, however, soon doubted that they had followed correct procedure in applying to the governor in view of the plenary power over the making of laws and statutes given by the Crown to the General Court in the province charter. They therefore recommended that the proponents also prepare a petition to the General Court to bring in a bill "for incorporating a society for the founding and regulating an academy in the western part of this province." In this bill the applicants named Northampton, Hadley, and Hatfield as possible locations for Queen's College, and specifically authorized the president with eight of the fellows to confer bachelor af arts and master of arts degrees to qualified students. As Williams later reported to Smith, Governor Bernard had no objections to this procedure and stood ready to grant a charter even if the legislature were to pass the bill. This, however, did not come to pass. Though the lower house accepted the bill on its third reading on February 24, the upper house refused to give it a second reading and thus killed it. Three days later Governor Bernard signed the charter, only to come under intense pressure from his council to retrieve it for further consideration. The council, as Williams stated, "make part of the Board of Overseers of Cambridge College" and opposed the chartering of another college in Massachusetts as "greatly prejudicial to Harvard College ..." They appointed a committee to prepare a statement of their objections to the college in Hampshire County. The house, too, then asked Bernard to withhold the charter until the next session of the Court. It now appeared that the petitioners were stymied both in the General Court and in the governor's office. Neither authority had conceded any of the constitutional arguments, but both were reluctant to authorize a second provincial college.

No document gives better insight into the eighteenth century conception of a college as a provincial center for the training of society's leaders than the remonstrance of the Harvard Overseers against the establishment of a college in Hampshire County. Harvard College, their argument ran, was a provincial monopoly, funded and supported by the General Court for reasons of state. To preserve it and enable it to carry out its function meant to shield it against the competititon of similar seminaries of learning, even to the extent of prohibiting and stiflyng any attempts at incorporating a new college. Harvard, the Overseers stated, was "properly the College of the Government," and for another college to be established "exactly, or nearly upon *the same footing* with that at Cambridg3 ...would not only be quite unnecessary, but really prejudicial to Harvard College." It was quite immaterial, the Overseers contended, whether the new institution was called a college or a collegiate school, since there was "no real difference between [them]." Unlike the collegiate schools of England which were nurseries for the university colleges, Queen's College was to be Harvard's rival, not an inferior preparatory or subservient school. Its establishment would make Harvard lose potential and existing friends and benefactors, and the "multiplying [of] colleges without having a single one well endowed" would set a precedent of "pernicious consequences." In order to buttress their case for the monopolistic implications of an existing corporate charter the Overseers hinted that because of earlier royal endorsements of the Harvard charter, the governor's proposed charter for Queen's College might arouse the displeasure of the Crown. That was a specious argument at best, but the Overseers, sanctimoniously prefacing it with a disclaimer of any intent on their part to raise legal questions, used it to warn Governor Bernard:

> And although we do not now concern ourselves with the general question about your Excellency's right to grant charters; yet we persuade ourselves that you would not willingly, by virtue of your sole authority as the King's Governor, grant a any such sort of Charter as should however indirectly and remotely, interfere with, or tend in the least degree to frustrate the true intent of, another and prior Charter, given by the whole Legislature here, and ratified by the royal authority...

The Overseers also intimated by indirection that Queen's College might not be as open to youths of various denominations as Harvard had been where, they said, "the rights of conscience were duly preserved..." Above all, however, the Overseers stressed repeatedly that at Queen's College "the means of education ... will doubtless be far inferior" than they were at Harvard College, and that therefore it must be the primary aim of the governor, just as it was of the Overseers, to preserve Harvard's unrivaled position in the colony. Historical, financial, and legal considerations all led to one conclusion: For the good of the province Harvard's monoply on higher education must be preserved.

The Overseers' remonstrance achieved its purpose. For another thirty years Harvard was to enjoy its monopoly in the Bay Colony. In March of 1762 Governor Bernard notified the Harvard board and also the two houses of the General Court that he would neither issue a charter nor assist any group in applying for a charter in Massachusetts or England. He advised the Overseers to send their memorial and an accompanying statement to London to counteract any further action on the part of the Hampshire petitioners. In this statement the Overseers asserted flatly that they did not think the governor had authority to issue any charters, and they urged all friends in England to use their influence "that no such charter be granted by his Majesty, nor any order or mandamus sent to Governor Bernard for granting such an one."

The friends of Queen's College, however, were not yet ready to throw in the sponge. For assistance in their next move they turned to General Jeffery Amherst, commander-in-chief of the Birtish forces in North America, and hero of Lousiburg, Ticonderoga, and Montreal. Israel Williams submitted to him a petition for a royal charter for a collegiate school with the request that Amherst endorse it and transmit it to the Crown. The petition played heavily on the royal sympathies for the plight of a frontier population "exposed to the invasions and depredations of our French and Indian enemies," of a people whose"blood poured out like water," and whose massacred bodies had been "given to be meat for the beasts of the land..." It flattered the King with an account of his military successes in Canada and gratified him with a picture of "infant plantations ... filling with inhabitants" and with a promise that, should the school be founded, it would train missionaries to civilize and Christianize the Indians. Unfortunately for Williams the King never read the colorful document. General Amherst was unwilling to circumvent the governor and council of Massachusetts, and only assured Williams of his support in London once the petition would be submitted there through the Massachusetts authorities. That, of course, stopped this approach, and Williams and his friends embarked on a letter writing campaign to potential supporters in England. But all of this was to no avail. The Queen's College project remained still-born, and no other college was erected in western Massachusetts until Williams College was chartered in 1793 and Amherst College in 1824. Harvard kept its lonely eminence until the century's last decade.

Next to the challenges to the college monopoly in Massachusetts, Rhode Island, and New Jersey the series of abortive attempts to found colleges in New Hampshire, Georgia, and the Carolinas give us yet another measure of the difficulties faced by the advocates of provincial colleges. With the exception of South Carolina, the chief obstacle in the path of would-be college founders was the distrust displayed by Anglican officials toward non-Anglicans. In New Hampshire the ministers of the dominant congregational churches had proposed at their convention in 1758 to found a college or academy under the toleration plan, and petitioned the province's governor for a charter. They acted, the ministers wrote, "not from any private or party views," but from a "desire to serve the government and religion." They asked the governor to appoint them or any others he chose as trustees, and to enable a committee named by them to raise funds for such an institution. Governor Benning Wentworth, however, refused the charter, because of his uneasiness over the proposed college's congregational sponsorship.

In the next decade the reluctance of Anglican authorities to authorize institutions not directly under their control was in evidence in Georgia. There George Whitefield, the English missionary of the Great Awakening, had established an orphanage in Savannah with the aid of individuals of many denominations. In 1764 he wanted to enlarge it into an academy or college and he petitioned Governor James Wright for a land grant. The governor and both houses of the legislature were impressed with Whitefield's proposal and in January of 1765 granted the request. But opposition arose in England where the Archbishop of Canterbury and the Lord Commissioners of Trade and Plantations objected to Whitefield's unwillingness to give explicit assurance of preferment for Anglicans. The Crown officials were suspicious of Whitefield's evangelism and the support he received from dissenters. They resented his assurances to his contributors that his intended college "should be [founded] upon a broad bottom and no other." To Anglican officials such liberality was the project's fatal flaw.

The specific objection which moved Secker to veto Whitefield's college was that it had been modelled on the presbyterian foundation of the College of New Jersey. Secker preferred King's College as a model with its Anglican president and Anglican liturgy at religious services. But Whitefield told Secker that he could not

> in honor and conscience oblige the master of Georgia College to be a member or minister of the church of England. Such an obligation [he explained] ...had greatly retarded the progress of the College of New York.

By contrast, he went on, the understanding obtained for the College of Philadelphia that there be no charter preference and no preferential policy, had been of great advantage to that college. Whitefield reminded Secker that even though the charter had not forced the Philadelphia trustees to appoint an Anglican president, they had done so anyway. The same development, he suggested to Secker, might safely be expected for the college in Georgia. But his arguments accomplished nothing. The word from the Crown remained "no." Whitefield therefore proposed to Governor Wright to enlarge the orphanage by building an academy such as had preceded the College of Philadelphia. Perhaps in later years Savannah might follow the Philadelphia example and add a college to the academy. But in the 1760s college plans were given up in Georgia, and the Crown officials carried the day.

A similar situation obtained in 1771 in North Carolina. Here the legislature in January incorporated the Fellows and Trustees of Queen's College, to be located in Charlotte. In chartering this institution both legislature and governor displayed a remarkable degree of cooperation. The assembly nominated a board of fourteen trustees, twelve of whom were Presbyterians. In exchange they accepted the requirement that the president be an Anglican and be licensed by the governor. Governor and assembly each carried their point and worked out a mutually acceptable compromise. Neither appears to have insisted that the charter carry the usual clause prohibiting discrimination against students on religious grounds. When he recommended incorporation to the Board of Trade and Plantations Governor Tyron explained his readiness to accept the heavily presbyterian board by acknowledging the assembly's aid in past political difficulties. But again Anglican and royal officials disagreed with their representative in the colony. If this college were to be incorporated, they told the Crown, ti will "in effect operate as a seminary for the education and instruction of youth in the principles of the presbyterian church..." Even though, they said, they approved the "tolerating spirit" manifest in the King's dominions and appreciated the "loyalty and zeal" shown by the North Carolinains, they felt that a royal charter would but grant "great and permanent advantages to a sect of dissenters ..." They therefore advised the King to disallow the incorporation, and the Crown did so on April 22, 1772. Queen's College, however, did not thereby disappear. It conducted its operations as an unincorporated academy, until it was incorporated as Liberty Hall Academy by the new state government in 1777. In 1771 Anglican opponents had once more succeeded in preventing the establishament of another provincial college not entirely under their control.

In South Carolina, however, the circumstances surrounding the failure of another pre-Revolutionary provincial college project point to the excitement over the Stamp Act and the rising revolutionary agitation as culprits rather than to Anglican officials. In this colony a bill establishing a college was prevented from being read when the lower house was prorogued in 1770 by order of the governor. As far as we know, the 1770 bill represented the third attempt in South Carolina to found a college by action of the legislature. The first had failed in 1723, apparently because of lack of funds. The second, submitted in a bill on April 1, 1765, for "establishing and founding a college or seminary of learning within this province," had fallen victim to neglect during the Stamp Act crisis. The 1770 plan, then, was part of a more comprehensive bill to expand the free schools of South Carolina. It was first proposed by Lieutenant Governor William Bull on January 30 and introduced into the lower house on March 31. When the house was dissolved , renewed efforts were made to reintroduce the bill in August 1770 and again in January 1771. But these efforts failed as legislators turned their minds and attention to the conflict with the mother country. There appears to have been little doubt all along that college founding was properly the work of the legislature and little hesitation to engage in the necessary committee work. The question, apparently, was not whether or not the legislature could found a college and gain the endorsement of British officials, but whether such a project could gather enough support at home to command the necessary public funds.

Even though the 1770 bill asked for private donations for the construction of a college building on land appropriated by the legislature in Charleston, it proposed the College of South Carolina as a provincial school authorized and endowed by the legislature and presided over by a member of the Church of England. The college trustees were to consist of the Lieutenant Governor, the Governor, the Council President, the Speaker of the House, and an unspecified number of unnamed individuals. These gentlemen were to enjoy perpetual succession, to serve as recipients of all funds given to the college, and to have the power of appointing president and professors, of making the college law and statues, and of bestowing degrees "as are usually granted at either of the Universities in Great Britain ..." The legislature committed itself to supply any necessary public funds in case private donations whould prove insufficient for the completion of the building. It also obliged itself to endow the college and to pay for its president and professors. The 1770 bill did not contain a phrase making illegal any discrimination against students on grounds of their religion. With its insistence "that the president of the said college shall be of the Church of England and conform to the same," it must have pleased a royal governor and London officials. Next to the charter of the College of William and Mary and of King's College the South Carolina charter draft provided for one of the most thoroughly Anglicanized provincial colleges in the colonies. What reception it might have been accorded in England must, however, remain speculation. The bill never cleared either house of the legislature before the Revolution swept away the necessity of submitting it to London. In

1770 the College of South Carolina remained stillborn.

Attempts in several colonies to break the provincial college monopoly for denominational and geographic reasons, Anglican opposition to new college foundations and agitation over the Stamp Act all had combined to undermine the position of the colonial colleges. As revolutionary unrest increased the anti-collegiate animus was felt with particular severity at the Anglican related colleges in Williamsburg, Philadelphia, and New York. In Virginia war and revolution would finally bring victory to the visitors in their struggle with the Anglicans and Tories on the college corporation. In Pennsylvania the Revolution itself would sweep Provost Smith and the trustees out of office. In New York Anglican aspirations and ignominious retreat provide a graphic contrast which highlights the administration of Myles Cooper, the successor to Samuel Johnson as President of King's College in 1763.

Cooper deliberately attempted to remodel King's after the Oxford pattern. He nurtured close connections with the Church of England, introduced such Oxford customs as the wearing of gowns, had a fence built around the college and a porter stationed at the gate to keep the students under tighter discipline. Of great help to Cooper was the upturn in the college's financial fortunes. Collections in England, Scotland, and Ireland netted £7,480 sterling or £13,500 in New York currency. These funds and other gifts made King's College in the mid-sixties "the wealthiest of the American colleges" as far as the endowment was concerned and provided the basis on which in 1767 a medical faculty of six professors began their work.

Under these circumstances Cooper entertained and vigorously promoted an ambitious project to raise King's College at one stroke, as it were, above its neighboring colleges and transmute it into an English university. His intent was thereby to place King's College as a cornerstone of a resurgent Anglican church in the colonies and as the key means "in diffusing principles of loyalty, affection of the parent kingdom, and of spreading the light of the Gospel among the native heathen." In Cooper's vision he himself as head of the college and leading Anglican clergyman was to play a large role in integrating the university with Anglican plans for renewed missionary activity among the Indians as well as for a colonial episcopate.

In September of 1771, with a full treasury and students appearing in what was for King's record numbers, the college governors authorized Cooper to travel to England. He was to request from the Crown a charter that would turn the college into a university and would authorize the establishment of two or more regius professorships, provided, the governors added, that "the expense in obtaining the royal charter exceeds not one hundred and fifty guineas to be paid by this corporation." Alas in 1772 Cooper returned without a charter because, he reported, the governors had "not furnished him with a copy," and he had not dared to have one drafted on his own authority "lest some parts of it might not be aggreable to the present governors, whom in any article he should be extremely unhappy to offend ..." As to the regius professorships, they thought they might yet be established. The governors wasted no time in ordering a committee to prepare a charter draft, but it took nearly two years for the document to be composed, approved, and forwarded to the Crown officials.

The draft charter was a remarkably ambitious blueprint for establishing King's College's claim to academic hegemony over the province of New York. It declared King's College to be "the mother of the American University in the Province of New York" in exactly the same words as Trinity College, Dublin, had in 1592 been incorporated as the conerstone for a university in Ireland. In each case the original college was expected to be joined by several others to constitute a university on the model of Oxford or Cambridge. In New York King's College was to remain the leading college, its board of governors, suitably enlarged over the existing one, to serve at the same time as the university's board of regents. King's president was also to be the university's president and obliged always to be a communicant of the Anglican Church. Cooper and his frineds had also sidestepped the vexing problem of a provincial college monopoly. As members of a privince-wide university colleges presumably would not compete with one another, and the provincial board of regents could adjust conflicting claims and avoid or settle rivalries. Certainly the King's College trustees, being themselves university regents, had nothing to fear from the projected arrangement!

But with their draft charter they sought more than academic hegemony in New York. Through strong ties with the mother country and the Anglican Church they wanted to give the American University as much political clout as the English universities enjoyed. They thus gave the regents and officers of the university power to elect two representatives to the New York Assembly. In an obvious approximation to English custom they also granted voting rights to the holders of advanced degrees who had kept their name on the roles of the university for an annual fee of five shillings. These voting graduates were, in effect, the equivalent to Oxford's non-regent masters. In addition, the university charter took care to expand the King's College board of regents by _ex-officio_ appointments of overseas dignitaries. These included the archbishops of York and Armagh in Ireland, the bishop of London, the president of the Privy Council, the Secretary of State for the American Department, the Chancellor of the Exchequer, and a university chancellor to be elected by the regents. The university's board was to consist of the original King's College trustees and yet to be elected trustees. Altogether it would number fifty non _ex officio_ members and the original and new _ex-officio_ appointments just mentioned. With this preponderance of royal and Anglican office holders and with the injunction that president and vice-president of each of the colleges had to be practicing Anglicans the university was sure to fit the English pattern of an establishment institution. The charter also acknowledged the policy of toleration by prohibiting discrimination in all matters academic against persons of any religious denomination. In every conceivable way it provided for the Anglicanization of the American university while at the same time making sure that King's College would remain the heart and center of this English university system in New York.

The drafters sought to combine their attempt of gathering wide and powerful support for the university with their desire for effective leadership and administration within the institution. To do this they differentiated the university regents as a political body par excellence, designed for its members' access to or participation in the secular and ecclesiastic establishment of province and empire, from a smaller subdivision -- the Academic Senate -- in the university and from subordinate minor senates in the colleges. The regents were to meet annually with a quorum of fifteen and were authorized to elect from among themselves a senate of twelve, all of whom had to be residents of New York City and had to include the university's Vice-Chancellor and President. Of these twelve men, seven constituted a quorum. By a majority vote of four the Senate could thus carry out the business of a fifty man board as far as the university's internal affairs were concerned. The Senate had power to determine the books to be read, to make laws and ordinances and to administer the disciplinary measures of expulsion, suspension, rustication, and degradation, subject to changes or annulment by the full board. In the colleges the minor senates were to have delegated power over student affairs. They were to consist of president, fellows, professors, and tutors. On the college level, then, there was to be the appearance of faculty government on a restricted basis, corresponding, by and large, to what at Harvard and other American colleges had been known as the "immediate government." For the university, however, even this immediate government remained in the hands of external governors. The charter was an ingenious concoction of devices eclectically borrowed from European and American academic traditions to yield what Cooper and the King's College governors most wanted: An English university in New York, comparable institutionally and governmentally as much as that was possible to Oxford and Cambridge, and placing King's College at the center of the university as the new system's crown jewel. The demands of imperial relations and internal administration were both well provided for.

Despite the endorsements the charter had garnered from Crown officials the times were not propitious for its passage. Though the news reached New York in the winter of 1774/1775 that the Crown was willing to appoint a regius professor of divinity, the closing of the port of Boston and, in April of 1775, the armed clash at Lexington rudely spoiled the plans of the academic imperialists. In May Mules Cooper, Tory sympathizer that he was, had to flee for his life to escape tarring and feathering and other indignities. He left New York on board a British warship. The college continued to operate until April of 1776 in its accustomed quarters. Thereafter the building was requisitioned as a hospital, and classes were held for another year in a private home. In 1774 King's had celebrated its last public commencement, and the last bachelor degrees were given privately to six graduates in 1776. All class activity seems to have ceased in 1777. It was not until 1784 that moves were undertaken to bring the institution back to life, and not before 1788 that the college could again confer degrees. By then there was no longer any thought of King's College becoming the mother of an English university in the New World. The Revolution had changed all that.

The commencement of the War for Independence then brought the final demise of the eighteenth century provincial college. In its place were to move state universities and private, usually denominationally sponsored and supported colleges. By the end of the century monopolies were to be broken not only in New Jersey, but also in Maryland, Virginia, Pennsylvania, Massachusetts, Tennessee , and New York. Where the eighteenth century college survived as a type it bequeathed to the nineteenth century the concept of denominational stewardship for a community of Protestant Christians. Passed on likewise was the memory of a valiant but unsuccessful attempt in Rhode Island to create a truly multi-denominational, pan-Protestant college with equal representation and rights in governing board and faculty guaranteed to all participating denominations. Yet the provincial college as America's representative collegiate institution had disappeared.

14. Colleges under Pressure: Governmental Changes and Curricular Innovations[*)]

For the colleges the eighteen-seventies brought challenges to their systems of governance and to their curricular arrangements. These challenges paralleled inside the college walls the growing demands outside for greater freedoms and self-determination. For the colleges they brought pressure on the governing boards and the faculties. Eventually they resulted in increased influence of legislatures over the governing boards and of governing boards over the internal college government by professors and tutors.

At Harvard College the outlines of this shift had become visible long before the seventies. Beginning with the tutor rebellion of the 1720s a steady gain of power had accrued to the Overseers and to the non-resident members of the corporation. The losers in this development were the resident fellows and the tutors. By 1754, when Henry Flynt retired after fifty-five years of uninterrupted service as a resident tutor, the non-resident fellows began to outnumber their resident colleagues, and by 1780 only one single resident fellow was left. The college had reached, as Morison put it, "the final stage in the evolution of the Harvard Corporation from a group of teaching fellows on an English collegiate model to a board of external trustees, connected with the living organism of the University only through the President." But before that stage was finally attained the college had to weather a good many constitutional and governmental storms, all of which, in one way or another, contributed to the strengthening of the external government.

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*) Parts of this section have appeared in print and with documentation as "The American Revolution and the American University," Perspectives in American History, X (1976), 286-299.

In the twenties and thirties the Overseers of Harvard College were given opportunities to assert their authority in challenges and disputes concerning the college's constitutional government. These occasions began when Timothy Cutler, ex-President of Yale College and then rector of Boston's Anglican Christ Church, and Samuel Myles, Anglican minister of King's Chapel, sought membership on the board. With their petition Cooper and Myles attacked the traditional toleration with preferment principle of college governance. They argued, in fact, that toleration not only applied to students but to members of the governing board as well. Yet the Overseers, with backing of both houses of the General Court, rejected the request and insisted that under the preferment principle the college had been placed at its foundation under the joint oversight of secular magistrates and congregational ministers.

Not long thereafter the Overseers found themselves in an awkwardly antagonistic position with the college corporation. The issue arose over the repeated bouts of intemperance of one of the professors. The corporation had taken the initiative and had recommended his dismissal. The Overseers temporized and only agreed to the recommendation more than half a year later. A similar situation then occurred a few years later in the case of tutor Nathan Prince. In October of 1741 the Overseers, having received complaints, felt constrained to ask the President and tutors for a written report on Prince's behavior. In November they called Prince three times to appear before them and reply to the charges. Prince refused, but later submitted a written defense. In a series of meetings stretching into April, 1742, the Overseers rejected several of Prince's appeals and then dismissed him from both his offices as tutor in the college and fellow on the corporation. The Overseers, it had become quite apparent, had taken it upon themselves to discipline a member of the corporation.

The dismissal of Prince by the Overseers did not turn into a constitutional cause celèbre mainly because the corporation was only too happy to leave the disciplining of one of its members to others and to be relieved of not only an irksome affair but of a trouble-maker as well. Prince had rightly insisted that the initiative for disciplinary proceedings against tutors lay with the corporation rather than with the Overseers who held appellate rather than original jurisdiction. But the fellows, had they exercised their jurisdiction, would have acted as an aggrieved party and as judge at the same time. They thus did not object when the complaint of President and tutors went to the Overseers, Prince, however, took his case to the General Court and argued that in the college law of 1642 and the charter of 1650 "the Court did not vest the Overseers of said College with such a sovereign power over the said Corporation ..." Rather, Prince went on, the Court reserved such powers to itself as the college visitor. While Prince was undoubtedly correct in saying that the General Court ought to be viewed as visitor of the college, it did not follow from this that neither corporation nor Overseers had the power to discipline themselves and dismiss members of the corporation, provided correct procedures had been followed in the proceedings. Prince's appeal to the legislature, however, produced no further investigations or reconsiderations. His case remained closed and the Overseers' action unchallenged.

More threatening to the corporation and to the faculty was the Overseers' politically motivated enforcement of censorship. In April of 1776 they required that members of the corporation and the faculty declare their political prinicples. The officers and instructors complied, and the Overseers accepted their report. Two years later a similar inquiry into the political principles of a college employee brought on a clash between the two governing boards. The corporation had elected William Kneeland -- according to Quincy "a man of great worth and respectability" -- as college steward. Unfortuately for Kneeland, the Overseers thought him to harbor misgivings over the colonies' course towards independence. "Reserving to themselves the right they have by the charter of approving or negativing the election of a steward made by the corporation," they therefore recommended to the fellows to reconsider their action and elect someone else. The corporation, however, disputed the charter claim, and the Overseers, debating the matter once more, conceded the point to the fellows. The corporation then proceeded once more to the election of a steward without submitting their choice to the Overseers. The tug-of-war between the two boards and between corporation and faculty was inevitable given Harvard's form of charter government. What was and is remarkable is not that there was conflict, but that even in the years of stress this conflict did not lead to more serious strife within the college. War and constitutional angles had brought interruptions and disturbances aplenty, but little permanent damage was done. The significance of Revolution and Independence would appear only in the 1780s and later when the college would have to adapt itself to the altered political conditions of the country.

In remarkable similarity to the situation at Harvard constitutional issues within Yale College were less disruptive in the seventies than they would become in the eighties and nineties, while at the same time they were of greater and more lasting significance for the history of the institution than the disturbances caused directly by the war. The downfall of Clap led to a reaffirmation of the view that as a public institution Yale was to serve the entire commonwealth with scrupulous regard for the rights of all its members inside as well as outside the college walls. Ebenezer Baldwin expressed this sentiment when he wrote that "Yale College is a very great emolument and of high importance to the State," and that consequently it was "the interest and duty of the Commonwealth to afford it public countenance and support." By the beginning of the seventies it appeared at Yale as at Harvard that the colleges had again become more responsive to the needs and desires of their respective commonwealths.

But appearances were deceiving. The fellows of the corporation regarded with suspicion the efforts of the tutors and of Daggett to infuse the curriculum with new life, and set about to get rid of the innovators. President Daggett himself was the first victim of their intransigence. Finding himself in a cross-fire from students and fellows -- the students petitioned for his removal in 1776 -- and beset by food shortages and suspension of Assembly grants, Daggett gave up the presidential office in 1777. He continued, however, to serve as Professor of Divinity. The tutors were next. Timothy Dwight resigned in 1777, and Joseph Buckminster and John Lewis followed in short order. The cause of their departure was the corporation's apparent displeasure with the turn towards literary studies. Although they had allowed Dwight in 1776 to teach history, rhetoric, and belles lettres, their reported remark that Daggett and the tutors had turned the college into Drury Lane and "left the more solid parts of learning and run into plays and dramatic exhibitions chiefly of the comic kind" had made clear their true feelings. At a time of grave military and economic crisis the corporation cast itself into the role of a conservative, clerical society unresponsive to students, faculty, and the people of the colony.

The first rumbles of the conflict between the corporation on the one hand and students, faculty and the people of Connecticut on the other had been heard as early as 1771 when in response to the appointment of Nehemiah Strong as Professor of Mathematics and Natural Philosophy a complaint appeared in The Connecticut Courant on April 16 over the signature of one "Timothy Bickerstaff." Bickerstaff felt that "although the knowlege of mathematics and natural philosophy tends as much as any of the arts and sciences to dissipate superstitution, chimeras, and old women's fables ..." the college was neglecting medicine, a field which in Philadelphia and New York -- but not in New Haven -- had received its proper recognition in the colleges. Bickerstaff was soon seconded by "Parentes" and "Misericordia" as well as "X" who revived old complaints of arbitrary corporation government, accused the steward of enriching himself at the expense of the students, and charged the college with unfitting rather than fitting youths for business. While the Assembly committee of 1774 had endorsed the corporation's rule and refused to acknowledge the complaints, it became obvious that the corporation, caught between the students' clamoring for literary studies and citizens urging new departures in professional education, rallied around collegiate orthodoxies inherited from Clap's days. In their view the college was to remain a clerical society intended primarily to prepare future ministers through a study of the classical languages and moral as well as natural philosophy. It was not to take long before the parties to the dispute locked horns and their conflict erupted into the open.

The confrontation began in the summer of 1777, at a time when Professor Daggett had resigned as president and when due to the war, regular college life had come to an end and the students were to be dispersed to different locations. A committee of the corporation suggested to a committee of the Assembly that they consider doing "something... to put the education of youth in that seminary upon a more extensive plan of usefulness consistent with the original design of the institution." In their reply the Assembly members paid lip-service to the corporation's reservations and expressed their belief that improvements could be made "without departing from or relinquishing the original design of the institution." Their concrete proposals, however, revealed a different approach. They cleverly turned the corporation's reservations against the corporation itself by agreeing not to interfere with any arrangements made in the past to foster the original purpose of the college. This, they conceded to the corporation, had been "the education of youth to supply the churches with able orthodox ministers." Thus, they concluded, the corporation should remain in full possession of its powers concerning the election of the professor of divinity, the supervision of his work and of his department, and the administration of religious tests to college officers.

But apart from matters falling into the purview of "the original design," the members of the Assembly committee felt no hesitation to suggest remarkable innovations. They proposed the appointment by the General Assembly of a second governing board -- somewhat akin to Harvard's Board of Overseers --with veto powers over the corporation's election of president and tutors. This they justified with the remark that the duties of president and tutors "extends to every branch of literature as well as the science of divinity." They further suggested that the new board together with the corporation elect all professors, except the divinity professor, set their salaries, and direct their teaching assignments. No professor thus elected could be dismissed from his office without the consent of the new board. This new board also was to be involved in students appeals in cases of degradation, suspension, rustication, expulsion, and corporal punishment, and in the financial management of the college. Finally, the Assembly committee proposed that the state endow and establish professorships of law and of medicine "as soon as conveniently may be" and "other necessary professorships from time to time..."

Here was a detailed and explicit proposal for placing Yale College under the governance and oversight of a state-appointed board. The state would assume financial responsibility for the college's expenses that exceeded the corporation's revenues, and -- most extradordinary of all provisions -- would take a direct hand in setting the curriculum and appointing, endowing, and regulating the professors. For all intents and purposes this plan proposed a Connecticut equivalent to the Regius professorships at Oxford and Cambridge. It was an ingenious scheme to take over the college by outflanking its traditional members through the introduction of state-appointees.

The corporation's response to these proposals was predictable. They thankfully acknowledged the Assembly's offer of financial support and professed their readiness to comply "with whatever measures tending to the real benefit of the college" as long as these did "not imply an abdication and resignation of the trust reposed in us as successors of the original partners and undertakers ..." They expressed their willingness to let an Assembly-appointed board take over the financial management of the professorships, save divinity, and to share with the corporation the powers of election, dismissal, and supervision of instruction of Assembly supported professors. But they insisted that all professors, including those introduced by the Assembly, were to govern and instruct the students under rules established by the corporation, and were to be subject to religious tests set and administered by the corporation as well as to abide by "that soundness of faith which it is the especial duty of the corporation to propagate ..." They reserved for themselves the right to establish professorships of their own under their sole control, and they refused to merge their revenues with those to be given by the Assembly. They expressed grave reservations but nonetheless agreed to subject the election of the president to an Assembly veto. They refused, however, to make the same concession in the case of the tutors. Their decision was based not on they grounds that the instruction of president and tutors extended to every branch of literature, but "on the desire of the corporation that the head of college should be acceptable not only to themselves and the ministry, but to the General Assembly and State." That reason, they added, obviously did not apply to the tutors.

To these counterproposals the Assembly made no response. It is unlikely that their lack of sympathy with the clerical and conservative character of the corporation abated, as the corporation gave them no reason to change their minds. The corporation, after all, had been responsible for the resignation of the three tutors in 1777 and 1778 and would also have to take the blame for the departure of the fourth tutor, Abraham Baldwin, in 1779. As if this was not enough, the fellows made every effort to ease out of office Nehemiah Strong,their professor of mathematics and natural philosophy. They succeeded in doing that in 1781. When they then offered Daggett's former professorship of divinity to Abraham Baldwin they received his polite refusal. At the same time the Assembly, despite their dissatisfaction with the corporation, were unwilling to provoke a serious conflict over the college charter. There is some indication from the diary of Ezra Stiles that they were mollified somewhat by the corporation's offer of the presidency to Stiles, a Yale graduate and congregational minister in Newport, known for his conciliatory attitude and endeavours in mediating sectarian strife. Stiles accepted the presidency in March of 1778, and was inaugurated the following summer. With a new president in office, the British raid on New Haven taking place a year later, and in 1781 the eighteenth century's largest freshman class arriving at Yale, no more was heard of a corporation-Assembly dialogue, and the issues raised in their 1777-1778 conferences remained below the surface until resurrected in 1792.

Closely interwoven with these political issues concerning college government were the incidents of student unrest and rebellion which eventually were to result in curricular changes. At Harvard the Overseers themselves endorsed recommendations in May of 1766 to give up the familiar system of assigning each class to a tutor for his instruction. Instead they assigned to each tutor the responsibility for instructing all classes in the subject of his specialization. In this manner one tutor took over instruction in Latin, another in Greek, a third in logic, metaphysics, and ethics, and the fourth in natural philosophy, mathematics, geography, and astronomy. All four tutors, however, were to remain responsible for instruction in belles-lettres, including elocution, English composition, and rhetoric. As before the professor of divinity and the professor of mathematics and natural philosophy would continue lecturing in their fields. In the same year, too, the first great student rebellion occurred over rancid butter at commons. The battle cry, "Behold, our butter stinketh," and the subsequent commotion in the yard resulted in demands by corporation and overseers for a humble confession. It was answered, in turn, by the students' complaints of unconstitutional oppression. In the end the students were obliged to admit to irregular and unconstitutional proceedings on their part, and the matter subsided. But not for long. In 1768 the students passed resolutions against one of their tutors, and in the next year their protests against faculty rules brought the sheriff of Middlesex County into the yard. Other signs of change were in evidence as well. As at Yale, "placing" was abolished, and students were now listed in alphabetical order. Soon thereafter, on September 11, 1770, the first literary society was born. This was the Speaking Club, and it was followed quickly by the Mercurian and, in 1774, by the Clintonian. Similar groups had come into being at William and Mary, the College of New Jersey, the College of Rhode Island, and Queen's College. In these organizations students had taken the initiative, and they thereby supplemented in important and meaningful ways the official college curriculum. In a manner of speaking, the organization of these societies was the students' declaration of independence from the curricular tutelage of tutors and professors and, to some extent also, from the supervision of their governors. College life entered upon a new phase.

Although curricular changes and disciplinary problems with students occurred at all colleges in the pre-revolutionary decades, different situations account for varying developments. In Philadelphia the trustees were confronted with demands from parents of current and potential students for stricter disciplinary supervision of their boys. In response the trustees opened a lodging house in 1765 to provide "a collegiate way of life" for the college students. But not all students could be accommodated and complaints continued that the faculty allowed truancy to persist unchecked. In 1773 the college then instituted a policy of certifying private boarding houses for use by students. In Princeton at Nassau Hall the students' literary and political interests received the enthusiastic support of President Witherspoon. The American Whig and the Cliosophic societies had been founded in 1765 three years before Witherspoon's arrival from Scotland. Their debates and orations were just as effective in turning the college into "a school for statesmen" as were the lessons in classics, philosophy, and science presided over by Witherspoon. In nearby Brunswick instruction at Queen's College was in the hands of two Princeton graduates, the tutors Frederick Frelinghuysen and John Taylor. Both men had drunk deeply from Hohn Witherspoon's fountain of learned patriotism. Not very dissimilar to what had happened at Yale, the two Queen's College tutors in 1773 organized a literary society, the Athenian, and saw to it that their charges imbibed their learning and their patriotism in the classroom as well as in the society.

At a number of colleges, particularly those in larger cities, demands were heard for instruction in medicine and law. In 1782 the Harvard corporation decided to found medical professorships and to sponsor clinical instruction. In the next year Harvard's "Medical Institution" began its work with three professors in anatomy and surgery, theory and practice of medicine, and chemistry and materia medica. In 1788 the university granted its first medical degree in course. In Philadelphia the trustees had responded in 1765 by electing their first medical professor and, in 1767, by authorizing the conferring of medical degrees. At the 1768 commencement ten candidates received the Bachelor of Medicine. With the reorganization of the University of the State of Pennsylvania during the Revolution additional professorships were created in Philadelphia. By 1782 there were seven chairs in existence. They ranged from natural philosophy, mathematics, moral philosophy, and the classics to Oriental and German languages, English and oratory, and history. Again the appearance of studies in belles lettres and history show up as indicators of the turn away from the scholastic curriculum towards a growing interest in contemporary problems of society and the new nation. By 1783 the Medical School also was back in operation and after the interruption of the war years granted its first degrees in course in 1786. The trustees also gave wider recognition to their students' requests to exercise a choice in selecting their studies. They moved in anticipation of an elective system and permitted students to obtain the bachelor's degree by enrolling in one of four different possible courses of study. In addition they provided for special students to attend the university without preparing themselves for a degree. It should be added that not all of these plans came to fruition as envisaged. Financial difficulties interfered, and a change in the political alignments within Pennsylvania was to question and eventually to halt the life of the University of the State of Pennsylvania. But for several years the university trustees opened their institution to a wide variety of interests encouraged by the Revolution to demand public higher education.

In New York King's College had followed the trend to professional education with the inauguration of a medical faculty in 1767 and the granting of its first medical degrees two years later. When King's College reopened its doors in 1784 as Columbia College it furnished a graduating class of eight in 1786 and of five in 1787. But it did not overcome its financial difficulties. Nonetheless, the governors endorsed in 1784 the establishment of seven chairs in a faculty of arts, eight in a faculty of medicine, three in a faculty of law, as many in divinity as would be furnished by sponsoring religious societies, as well as ten additional ones ranging from ancient and modern languages to history, architecture, commerce, agriculture, music, painting, and natural history. In the next few months ten gentlemen were appointed to fourteen of these chairs, but then funds gave out and other, more pressing issues were being held up to the regents.

At the College of William and Mary student initiated demands for curricular reform, strongly supported in the press, widespread dissatisfaction with the Tory dominated faculty corporation, and popular desire for professional education converged in the curricular and governmental reforms of 1779. The reformers stressed the competitive disadvantages of Virginians whose sons were lured to Europe, Philadelphia, or New York in search of medical training. They complained of quacks and imposters and asked for medical certification as well as for training. Most of them mentioned both medicine and law, but one of them wanted in addition to the existing professorships in the grammar, philosophy, and divinity schools appointments to chairs in astronomy, modern languages, history, botany, and chemistry.

The masters of the College of William and Mary, however, resisted these criticisms and suggestions. They were fully convinced that the Oxford and Cambridge models for their classical and mathematical curriculum were superior to any other, and they were not interested in training professionals. For them the students in the college's grammar school provided an important part of their livelihood which they were loath to give up. In both college and grammar school students could attend as long as they wished and did not have to complete the full course of studies. In the college there were no recognized annual classes, and few students attended to obtain a degree. Routine instruction and surveillance of the boys in grammar school and college did not pose inordinate problems or demand exacting duties of the professors. Under these circumstances it is easy to understand why they turned deaf ears to calls for change, and why an alteration in circumstances would not occur until the decade's last year.

To many of the critics the presence of the grammar school and the masters' tolerance and humoring of the school boys constituted the chief obstacles to reform. The grammar school not only diverted resources of the college, but it also subtly undermined the pursuit of professional studies by permeating the college with the atmosphere of a boys' school. One writer wanted "young gentlemen" at the college, not little boys. The latter should be prepared for the college at a public grammar school "in some principle town ... upon nearly the same plan as Eton or Westminster." If the grammarians were kept away from the college, the collegians then could be put "under decent and manly restrictions." Their residence at Williamsburg could be "honorable," as they "would be considered as young men and treated with a respect and distinction unknown in the present college." Critics like these were plainly impatient with the professors' regime at the college.

The long-standing dissatisfaction of the college visitors with the masters and their growing frustration over their inability under the college charter effectively to discipline the faculty then merged with the clamor of the reformers and the surging demands of the colonists for self-rule. After independence had been declared the visitors in 1777 dismissed the staunchly loyalist professors Camm, Dixon, and Jones for "neglect and misconduct," leaving only James Madison as president and John Bracken as master of the grammar school. The college was near bankruptcy and, with the colony preoccupied wtth war, revolution, and constitutional change, faced an uncertain future. But on December 4, 1779, the visitors, under the prompting of their colleague Governor Thomas Jefferson, asserted their authority and placed the college under a new form of instruction and governance. Their statute had as its immediate objective the solvency of the college. It therefore ordered that professors be paid in tobacco directly by their students, that commons be aholished and students be made to pay for their meals at prices determined by president and professors, and that students on scholarships receive the interest on these endowed funds only, the principal being allowed to remain intact. The main import of the changes, however, was curricular. The visitors abolished the grammar school because, as Jefferson wrote, it "filled the college with children" and rendered it "disagreeable and degrading to young gentlemen already prepared for entering on the sciences and "discouraged [them] from resorting to it."

Since the visitors lacked power under the charter to change the number of professorships they altered their objects. They did away with the two chairs in divinity and the chair in the classical languages and substituted for them professorships in law and police, anatomy and medicine, and the modern languages. To the professorship of moral philosophy they added the laws of nature and nations and the fine arts, and to the chair of mathematics instruction in natural philosophy. The visitors had taken advantage of the disappearance of Crown and Privy Council as the masters' ultimate court of appeal, had realized their long-standing desire to rid the college of the professors of divinity, and had responded favorably to the often heard demands for instruction in law and medicine. With the 1779 statute they had chosen the altered professorships as the means by which to begin the transformation of their provincial college into a modern university.

While the most successful innovation of the 1779 reforms at the college turned out to be the institution of the law professorship, the more immediate results of the new regime for the students lay in their greater freedom of choice in their studies. As summarized in the statutes of 1792 boys under the age of sixteen could enroll with a professor as private students. Those sixteen or older were expected to enroll on a regular course of at least one year in each of the schools of philosophy and of mathematics. Thereafter they were free to decide upon their studies with the advice of the president and masters and could obtain their degrees when they were found to have become proficient in their studies. Students aged twenty-one or older or in possession of acceptable qualifications could enroll immediately in the law course.

Yet in Virginia the actuality of professional training was less than imposing. The professor of modern languages appears to have dealt mainly with private students, and the medical school disappeared from the college in 1783 with Professor McClurg's removal to Richmond. Matters stood differently with George Wythe, the first man to hold a professorship in law at an American college. For eleven years he combined his teaching career with his duties as judge on the Virginia High Court of Chancery. In 1790 he resigned his chair at the college and opened a law school of his own in Richmond. Even with his eventual departure from Williamsburg his teaching of law at the College of William and Mary must be considered as the school's most fruitful venture into professional education.

At Yale the arrival of Ezra Stiles promised a new day for curricular reforms. To be sure reforms had already begun in a quiet fashion under his predecessor Naphtali Daggett. Daggett had abolished the placing system whereby students had been ranked, much to their continued annoyance, by their family's presumed social standing. President and tutors, intent upon infusing new life into the badly torn college, then focused their attention on the growing student interest in belles lettres. This interest had been nurtured in student literary societies ever since the 1750s. Linonia had been founded in that decade, and in 1767 it was opened to freshmen. In the next year Brothers in Unity was created as a rival. The tutors encouraged their students to try their hands at poetry and dramatic performances, and in the fall of 1767 asked the junior class to recite English grammar. Daggett encouraged these moves as he strongly believed in the value of literary training for future ministers and public servants. The tutors, however, placed a more direct, less instrumental, value on literature. One commentator wrote: "Convinced that America was a cultural backwater, the promoters of English studies at Yale soon saw themselves involved in a far more important movement than mere professional preparation. They began to see themselves creating an American culture." But even more than this was at work. The study of the English language and literature took on intensely nationalistic and patriotic overtones and contributed to the rising revolutionary fervor among Yale students. It was during his student days at Yale that Noah Webster's later efforts for the creation of an American language had their inception, and it was the literary work of Yale tutors Timothy Dwight and John Trumbull, both appointed by Daggett in 1771, that has become associated with the fame of the Connecticut Wits.

Immediately upon his arrival Stiles presented to the Yale community a detailed plan and justification for allowing Yale to grow into a university. When he stressed the addition of professorships to the existing college faculty he pointed to similar developments in Bologna, Padua, Edinburgh, Glasgow, and Dublin. Thus his models were not the ancient English universities, but the medieval institutions of the European continent as well as the modern universities of the English speaking world. With his adoption of modern practices abroad and his responses to legislative and other outside pressure for professional training Stiles had taken a major step towards the creation of an American university.

His emphasis on professorial chairs rather than professional faculties allowed Stiles to stay within the financial limits set by the resources of college and state. The addition to the college of chairs in Hebrew and Oriental languages, in ecclesiastical history, civil history, oratory and belles lettres, and in law and medicine together with the already existing professorships in divinity and in mathematics and natural history would strengthen the college rather than weaken its position by the establishment of rival schools or faculties. Stiles was realistic enough to know that not everything could be accomplished at once, and he gave priority to the professorships in law and medicine for which there was popular demand. He suggested three series of lectures in anatomy, *materia medica*, the nature of diseases, *ars medendi*, and surgery. Students in the college would attend, and upon completion of the course receive a bachelor of physic. Then was to follow an apprenticeship and a year of lectures on practical subjects. Further evidence of proficiency could be rewarded with the doctor of physic degree. The law professorship, Stiles thought, was to offer instruction in the civil and the common law, the codes of the new states, and in the forms and policies of governments. Stiles' entire plan was meant as an enrichment of opportunities for students in the college. Instruction in every field save medicine was to remain under the authority of the college faculty.

Behind Stiles' proposal for a college enlarged by professional studies lay a civic purpose. As Stiles saw it, an American university was to grow organically out of the college, and was not to be superimposed on it and allowed to destroy it. By keeping the college as "soul and body" of the institution Stiles hoped that he could counteract disintegrating tendencies which had already become visible in France and were to lead in 1793 to the abolition of the French universities. For Connecticut Stiles was determined that Yale remain first and foremost the commonwealth's center for the education of its future governors and civic leaders. General studies in the liberal arts were to constitute the heart of tis curriculum. The legal studies he called for were not designed for "educating lawyers or barristers" -- that, Stiles thought, could best be accomplished through apprenticeship -- "but for forming civilians." The graduates of Yale College were to be given

> the discipline and education ... in that knowledge which may qualify them to become useful members of society as select men, justices of the peace, members of the legislature, judges of courts, and delegates in Congress.

From them this knowledge would spread to citizens in "mechanic, commercial, or other secular employments" and fit them as well "for public service and the elegant enjoyment of life." A modern university in America, as envisaged by Stiles, was to be the college writ large, the community of young men and men of affairs joined together as learners and teachers, rather than a motley assemblage of relatively independent professional schools or equally unrelated colleges devoted solely to the schooling of boys by pedagogues, young or old.

In many cases the initiatives recounted here remained plans and projects and failed of translation into actuality. They indicate nonetheless that the decades of revolution and political and social convulsions outside were times also of ferment within college walls. The new stirrings pervaded the social life of undergraduates, made them probe and resist college authority, and provoked demands for new instructional fields. They made it plain, also, that many Americans deduced from the presence of the unrest and the demands a need for increased governmental supervision over and support for the colleges. The public nature of collegiate institutions appeared in a new and more intense illumination.

15. The American Revolution: The Creation of State University Systems*)

Revolution and independence created the American university and brought to a close the era of the colonial college. The provincial colleges of Massachusetts, Connecticut, New Jersey, New York, and Rhode Island as well as the College of Philadelphia and Dartmouth College in New Hampshire were acknowledged, confirmed, or taken over by their respective state legislatures through consitutional or statutory enactments. In Virginia the faculty of the College of William and Mary lost most of its governmental powers to a revitalized board of lay visitors. By 1791 steps had been taken in Maryland, Georgia, North Carolina, and Vermont to create new colleges, universities, or state university systems under public sponsorship and with state funding, while in Virginia, Kentucky, Pennsylvania, and South Carolina colleges were founded through private intitiative. In every state the Revolution altered in large or small measure the governmental arrangements of the colleges or brought about the founding of new institutions. These changes and innovations, in turn, led to novel and unforeseen complications in college governance. Under the colonial regime contemporaries had commonly held the colleges to be civil corporations for the public's benefit and under the sponsorship and supervision of provincial assemblies. They also had assumed that the colleges, with the exceptions of the two New Jersey institutions in Princeton and New Brunswick, had enjoyed a monopoly on collegiate education in their colonies. These assum--tions now were to come under attack. During and after the Revolution the colleges' status in law became clouded and ambiguous. Disputes raged whether the insitutions were civil corporations created for public purposes or private corporations founded by particular groups for particular purposes, or whether they could be variously classified in either category. In many states this issue became a point of contention in partisan strife and placed the colleges in the crossfire of political warfare. A resolution of these issues would not appear until the decision of the United States Supreme Court in the Dartmouth College case near the end of the nineteenth century's second decade. For the eighteenth century, however, the impact of the Revolution may be gauged by the creation of the first universities and the debates over the ambiguities and uncertainties concerning the legal status of the new nations' colleges and universities.

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*) Much of this section has appeared in print and with footnotes in my "The American Revolution and the American University," _Perspectives in American History_, X (1976), 299-317.

Expropriation of Anglican interests, new curricula, and assertion of student independence were neither the only indices of changing times nor the most dramatic. The clash of arms on college grounds, the evacuation of students to retreats in the country, the formation of college military companies, and the occupation of and destruction in college buildings by troops of either or both sides gave painful proof that togae cedunt armis. All colleges save Dartmouth were forced by armed confrontations between colonists and British regulars to cease their normal operations for a time, and all lost lives and treasure. Several also were to undergo constitutional and governmental changes of varying magnitude. Having seen themselves for the most part as servants of the public in their respective colonies, college governors could not but come to reflect, some reluctantly and some eagerly, in their educational and governmental arrangements the momentous social and political changes that were occurring outside classrooms and dining halls. The immediate threat to most colleges was physical damage and forced closure by the warfare that raged around them; the more deep-reaching effects on their constitutions were to come later when the battles had ceased and the Revolution would continue and bring to a finish what the war had begun.

At Harvard College the ardor of revolutionary sentiment began to cool somewhat after the Stamp Act crisis. Interruptions or changes in daily routine related to political events were minor. By 1768, however, students voted to boycott tea, to wear American-manufactured clothes, and to have their theses printed on home-made paper. In 1769 they organized a military company. But then the tempo of events increased. When British troops were stationed in Boston in 1769 the colony's legislature adjourned to Cambridge and for the next three years used chapel and library as meeting places for its two houses. Matters became more critical in 1774 with the arrival of British regulars in

Boston, the closing of the Boston port, and the dissolution of the General Court. The college corporation voted to dispense with a public commencement that year,a suspension which was to remain in effect for six more. Early in 1775 students nearly came to blows in the yard over the practice of a few Tory sympathizers to drink tea in commons, and in April the battle of Lexington turned Cambridge into an armed camp. The town became the headquarters for the American troops besieging Boston. On May 1 the students were sent on an early vacation, college buildings were used as barracks for the soldiers, and the libbrary and "philosophical apparatus" were evacuated to Andover. The academic year 1775-1776 saw the students being instructed in Concord and, with the British evacuating Boston in the spring, witnessed a return of students, books, and apparatus to their familiar quarters. There was one more threat of dispossession in 1777-1778 when an attempt was made to quarter the remnants of General Burgoyne's surrendered army in the yard. But, as Morison relates, when the corporation protested "the net result was a three months' winter vacation for the students." Disruptive and annoying as these tumultous times proved to be for orderly educative processes in the yard, the dislocations they produced were temporary and had few lasting after-effects.

At Yale the call to arms in 1775 brought to a halt the assembly's annual contributions and forced the corporation to tear down parts of the ancient College Hall. As at Harvard six years earlier, the students founded a military company. For the next six years public commencements were suspended. With the threat of the arrival of British troops and the growing difficulties for the steward to procure enough food for the hungry boys college operations were suspended temporarily in August and December of 1776, and finally brought to an end in New Haven in 1777. The different classes were to meet at various smaller towns inland. An assembly committee urged this dispersal out of concern over the possible seizure of college students as hostages: "The peculiar advantages the enemy may derive from the capture and detention of such a number of young gentlemen from the principal families in the state," they said, persuaded them that it was not"advisable that the students be called to reside in New Haven while the present troubles subsist..." The colony's future leadership was too valuable a prize to allow to be plucked by the enemy! Even after the students returned in June of 1778 lack of food brought a prolonged winter vacation. On July 5, 1779, the most dramatic episode occurred when a British fleet landed a raiding party, and actual warfare raged around the college. City and school narrowly avoided destruction by fire, though Professor Daggett, having retired from the presidency two years earlier, was taken prisoner and severely treated by his captors. He died of the aftereffects of his ordeal over a year later. Thereafter lack of food and a bitter winter hampered college operations, until the academic year of 1780/1781 allowed a resumption of business as usual. The crisis of war had been weathered.

In the other colleges of New England the war years brought disturbances and interruptions of various kinds. At the College of Rhode Island public commencement was suspended in 1775, but celebrated once more in 1776. When in December the British landed at Newport and American troops occupied Providence the students were dismissed. They did not return to the college until May of 1782. There was hope that instruction could be resumed in 1780, but the college building was then seized as a hospital for French troops. President Manning, nevertheless, began to give private instruction in his home until, in 1882, he and his students could return to a severely damaged college. Many years later, in May of 1800, the corporation finally succeeded in receiving compensation from Congress in the amount of $2,779.13. On the northern frontier the Dartmouth College students were kept in constant anxiety by rumors of British invasions and Indian raids. The Continental Congress voted special appropriations to the college to aid it in pacifying the Indians, and in 1776, 1777, and 1778 the college year was shortened by one month. The threat of attack and seizure by Burgoyne's army faded when on October 17, 1777, the general surrendered at Saratoga, but fear of impending Indian raids rose to new heights when shortly thereafter several Indian students were called home from the college to their tribe. Of all the colleges Dartmouth actually experienced the least direct damage and danger, but even here the costs in anxiety and interrupted academic proceedings were considerable.

South of New England in New York the buildings of King's College were requisitioned as a hospital in 1776, and all regular classroom activities came to an end the next year. At the College of New Jersey students attended the 1765 commencement in home-spun cloth and, after the battle of Lexington, formed a military company. In 1776 they had to celebrate their commencement without degrees because the trustees could not muster a quorum for the occasion. In December British troops occupied Nassau Hall and used it as a barracks and a jail. On January 3 the hall itself became a battlefield with Washington's army blasting the remnants of retreating British forces with artillery out of the building. Thereafter Nassau Hall served as a hospital for the American army until November, 1778. Desultory instruction resumed for a few students in private homes in 1777 and in Nassau Hall the year thereafter. With an annual average of graduating seniors of eight from 1777 to 1783 enrollments remained low while Witherspoon served in Congress during these years. He obtained from that body £7,250 for war damages suffered by Nassau Hall. For the college the war's most memorable moment came on September 23, 1783, when fourteen students received their degrees in the presence of the Continental Congress and of General Washington. The story at Queen's, the other New Jersey college, was similar. Not long after it celebrated its first commencement in 1774 the news arrived of Lexington and of General Howe's appearance before New York. The Athenian Society took up arms, the British occupied New Brunswick from December of 1776 to June of 1777, and the college closed down. Tutor Frelinghuysen entered a brilliant military career, rose to the rank of Colonel, and served various terms in the Continental Congress. Similarly, his colleague John Taylor obtained a colonelcy, fought in many battles and skirmishes, but also managed at the same time to return periodically to his duties with the college. President pro tempore Hardenbergh, serving his congregation in Raritan, was a member of the Provincial Congress and of the New Jersey consitutitonal convention. It was Taylor who succeeded in resuming instruction, at least intermittently, late in 1777 near the junction of the north and south branches of the Raritan River, and who in 1780 moved the college to Millstone. A year later, in May of 1781, students and tutor could return to their old quarters in New Brunswick. Taylor there struggled manfully to revive the institution. By October of 1782 he had assembled eighteen students in the college, but by 1784 he found the prospect discouraging and resigned. For the next three years only grammar school pupils continued academic work. New life was then infused into the college in 1786 when the trustees elected the Reverend Mr. Hardenbergh, trustee of the college since its beginning in 1767, as president and enabled him to move into a pastorate in New Brunswick. By 1789 the graduating class had risen again to ten members.

In Philadelphia and Williamsburg the colleges suffered not only from disruptions by military forces and local emergencies but also from the suspicions of their countrymen sympathetic to the revolution. The Philadelphia trustees felt compelled in the early weeks of 1777 to ask the Pennsylvania Council of Safety that they "not be particularly distressed." They were willing, the trustees emphasized, to share in "necessary public service," but they added that in any emergency the Council itself judge the situation "without leaving us every moment at the arbitrary disposal of any officers under you or their duputies." In June the trustees found it unavoidable to close the college, and during the British occupation of Philadelphia from September 1777 to June 1778 the college buildings were used as hospitals. Provost Smith and some of the professors and tutors attempted in the fall of 1778 to prepare the college for reopening in January only to be met by the determined opposition of their enemies in the Assembly. In 1779, finally, their foes triumphed and vacated the charter under which the college trustees held office. At the College of William and Mary the war brought temporary occupation by American and French troops, loss of a building as well as of its income from tobacco taxes, endowments, and lands. In this financially desperate siutation visitors and faculty petitioned the Virginia House of Delegates in 1776 for assistance, reminding the members of the House "that the college has been an object of legislative favors from its earliest days." The legislature responded with a grant of public lands in 1784. But before this happened the visitors had fully asserted their authority over the faculty, had placed the college on a more self-supporting financial base, had abolished the Grammar School and the professorships of divinity, and had reorganized and enlarged the academic program to provide professorships in law, medicine, and modern languages.

15.10

A more encompassing approach to a reorganization of higher education in the new states took the form of creating state systems of preparatory and collegiate education. After Myles Cooper's abortive plan for an American University in the Province of New York the first proposals after 1776 were discussed in Virginia. Thomas Jefferson envisaged a three stage system of elementary English education for all children, colleges for "all who were in easy circumstances," and "an ultimate grade for teaching the sciences generally, and in their highest degree." Sectarian jealousies and financial considerations prevented Jefferson's proposals to be accepted in the eighteenth century.

It was in Maryland that the first steps were actually taken to erect in the American states a university on the English model as a confederation of colleges. The project owed its inception to the endeavours of the indefatigable William Smith, author of the 1753 *General Idea of the College of Mirania* and in 1779 the just deposed provost of the College of Philadelphia. Smith's Anglican affiliation and the sympathies that tied him to the proprietary family in Pennsylvania had in no small degree led to the expropriation of the trustees of the College of Philadelphia and the transformation of that institution into the University of the State of Pennsylvania. Leaving Philadelphia behind in 1779 Smith turned to Maryland's eastern shore and there established himself as the master and visitor of the Kent County School, an incorporated Latin academy, and as rector of the Chester parish.

He took the initiative in promoting the enlargement of the school into a college, and in May of 1782 had the satisfaction of seeing the Maryland assembly receive, debate, and conditionally approve the petition of the visitors of the Kent County school to incorporate them with several others as the Visitors and Governors of Washington College. In November, with additional visitors chosen and sufficient funds secured through private subscriptions, the incorporation became effective, and classes opened at the beginning of the new year in 1783.

The legislature believed that the geographic division of the state in the eastern and western shores made it difficult to create one state university, but that the two colleges might later on be united "under one supreme legislature and visitatorial jurisdiction as distinct branches or members of the same state university." Like Myles Cooper's projected American University, with which Smith was familiar, the state university of Maryland also constituted a confederation of colleges separated from each other by many miles. Washington College was to be governed by a self-perpetuating board of trustees. Discrimination on religious grounds against students, professors, and governors was expressly forbidden, and the governors were obliged to submit to the legislature on their request the laws and accounts of the college. The legislature on its part undertook no commitment of financial support, but clearly looked upon the college as a first building block for a later state university.

The University of Maryland, though well launched in law and on paper, was not destined to prosper. Washington College, however, got off to a good start. At its first commencement in May of 1783 five regular bachelors and one master as well as one honorary bachelor and one master ad eundem received their degrees. In November of the next year the visitors and governors petitioned the legislature for a permanent revenue and gained the government's backing for the principle of "public instuuction for the education of youth under the care and patronage of the state." A house committee recommended public funds to pay the salary of professors and tutors, and both House and Senate committed themselves to provide a permanent fund of £ 1250 annually and forever. That accomplished the House in December ordered a bill prepared for the founding of a college on the western shore to be combined with Washington College into the University of Maryland. Early in 1785 St. John's College was chartered, granted an annual and perpetual fund of £ 1750, and joined with Washington College into a university. The provisions of the St. John's College charter were similar to those of Washington College. For the University of Maryland the charter prescribed government by chancellor, vice-chancellor, and convocation. The state's governor was to serve as chancellor, one of the two college principals as vice-chancellor, and at least seven visitors and two faculty members of each college should compose the convocation. By the spring of 1785 Maryland's state system of higher education was thus designed and funded. But of the university's two colleges, only the one on the eastern shore was in operation. St. John's was hampered by defaulting subscribers, and opened for classes only in 1789 after its funds had been merged with those of King William's School, a preparatory academy. Even then the university constituted little if anything more than the two colleges. In the 1790's interest in it as a separate institution began to wane. The two colleges, instead of cooperating with each other as members of the university, became rivals for the legislature's attention. Smith, who had returned in 1789 to Philadelphia, was no longer present to keep the university in the public and the legislature's eye, and the institution gradually faded away. In 1805 the legislature voided the act of its creation.

The first permanently successful state university as an administrative system of preparatory and collegiate education was established in New York. There the Revolution had derailed Myles Cooper's ambitious project of a provincial university, and King's College had for all practical purposes ceased to exist in 1777. After the conclusion of the war there was small likelihood that the legislature would confirm the college and the trustees under their old charter. Instead both houses began to consider a bill for establishing a university. Though there had been some expectation that this bill would transform King's College into a university, the early draft made no mention of the college. But in response to a petition of the surviving governors of King's College still in the city, the Senate acknowledged the request by changing the bill's title to "An Act for Granting Certain Privileges to the College heretofore called Kings College..." The thirteen signers of the petition admitted that many clauses of the college charter were "inconsistent with that liberality and that civil and religious freedom which our present happy Constitution points out." They requested that these matters be changed and the privileges of King's College be extended "so as to render it the Mother of an University to be established within this State..."

These proposals and actions resulted at one and the same time in the creation of the state university system of New York and the resuscitation of the remains of King's College as the newly named Columbia College, As the legislators had acted in response to the request of the thirteen King's College governors they could refute accusations of having arbitrarily and illegally altered a corporate charter without the consent of the corporation, although, strictly speaking, they had not submitted the new charter to the formal approval of the King's College governors. But perhaps they thought this unnecessary since no protest was heard from the thirteen petitioners of whom six were directly involved in preparing or endorsing the charter. Besides,it could be argued, that with only thirteen governors left in the city the legislature could reorganize the corporation which, under its charter of 1754, required a quorum of fifteen governors to conduct its business.

The act as passed on May 1, 1784, transferred the rights and privileges of the governors of King's College to the Regents of the University of the State of New York. That body was to consist of New York's governor, lieutenant governor, president of the senate, speaker of the assembly, attorney-general, secretary of state and of the mayors of New York City and Albany as *ex-officio* members, of two representatives each of twelve counties, and of one clergyman. The state's governor was to have the right of appointing successors to the regents representing the counties. The regents were to make the laws and ordinances for any of the colleges that were to constitute the university and to have the right of dismissing college officers for cause and after a hearing. Such colleges as were to be established were permitted to grant bachelors' degrees and were to be under the general supervisory authority of the regents. Privately endowed colleges could upon application of their founders or trustees join the university and send a representative as well as their president to the board of regents. The regents were also to select the president and the professors of Columbia College, and to insure that no professor be discriminated against on religious grounds or to be compelled to take a religious test oath. They reserved to themselves the power to grant degrees in divinity, philosophy, civil and municipal laws "as in every other Art, Science and Faculty whatsoever, as are or may be conferred by all or any of the Universities in Europe." Finally the charter declared all fellows, professors, and trustees to be regents of the university *ex officio* "and capable of voting in every case relative only to the respective colleges to which they shall belong, excepting in such cases wherein they shall respectively be personally concerned or interested." In this manner the new state university was to perpetuate and absorb the functions of King's College.

In its early years, however, the Regents of the University of the State of New York functioned for all intents and purposes not as the administrators of a state system of preparatory and collegiate education, but as the governors of Columbia College. They appointed instructors, authorized fund raising campaigns, opened a grammar school, and gave their blessings to a student literary society. The legislature also appeared to share the regents' concern for the college. To give greater voice to college interests on the board the two houses in November passed an amendment to the charter which added 33 appointed regents, twenty of whom were from New York City and likely to favor the college. The act also reduced the regents' quorum from fifteen to nine, allowed each of the state's denominations one representative on the board instead of one for all of them, and authorized an advance from the state treasury of ₤ 2552 "for the use of Columbia College."

The regents' favoritism towards Columbia College was first officially questioned by a committee of their own. Early in 1787 this committee stated that because of the regents' geographical dispersion over the state it was difficult for them to pay enough attention to all the academic interests of New York state. The amended charter had only made matters worse by concentrating power in the hands of a small group identified with the college in New York City. The remedy, the committee suggested, was to give each college a corporation of its own, subject only to a "wise and salutary" supervision by the regents. But the committee went still further. They told their colleagues that what they had said regarding colleges applied equally well to private academies which ought to be protected in their properties by incorporation. But even that was not enough. Public schools for reading, writing, and arithmetic, too, should benefit from the public purse. The committee urged the regents to ask the legislature to spend public funds on all levels of education, and tied this request to a self-reproach for the regents' past concentration on the welfare of Columbia College.

The act that finally evolved out of these considerations was passed by the legislature on April 13, 1787. As it repealed the university acts of 1784 and re-organized the Regents of the University of the State of New York, it clearly separated the trustees of Columbia College from the regents of the university system. It re-instated the King's College charter of 1754 with certain specified changes. The institution's name was changed to Columbia College, ex-officio trustees were eliminated as well as stipulations concerning the president's religion, test oaths, and chapel services. The number of the trustees was set at twenty-four and their quorum reduced from fifteen to thirteen. The university regents were to consist of twenty-four individuals of whom the governor and the lieutenant-governor were always to serve ex-officio. Vacancies on the board were to be filled by the legislature. The regents' chief task was "to visit and inspect all the colleges, academies, and schools" in the state and to incorporate newly founded colleges and academies under boards of trustees of their own. These boards were to be self-perpetuating, and the regents were to function as visitors and general superintendents over them all. The regents also held the power to raise academies to the status of colleges and to grant the higher academic and professional degrees. Given the history of resistance to denominational influence over educational policy in New York ever since the days of Livingston's Independent Reflector it is of moment to note that in distinction to the acts of 1784 the new act did not provide for any clerical representation on the board of regents. The regents were viewed and established as the state's secular supervisory agency for all matters concerning preparatory and collegiate education. They were to function under the direction of the legislature and to provide New York with a comprehensive system of higher education.

Thus in New York in 1787 a new constellation of college and state had appeared. As a purely secular matter the state assumed responsibility -- at least in expressions of intent and on paper -- over schools, academies, and colleges. Under its supervisory authority the latter retained their corporate autonomy which would allow them denominational leadership or influence to whatever extent their founders and trustees stipulated. The legislators obviously took it for granted that requests for the incorporation of colleges would come from many parts of the state and from diverse petitioners, some secular and others denominational. The act of 1787 was their answer to the question of how denominational and social heterogeneity could be harmoniously combined with the new state's search for secular cohesion.

New York's solution is to be understood best when seen as derived from local traditions and hammered out under contemporary circumstances. The specific arrangements of 1787 constituted a compromise between the friends of Columbia College and the champions of academies and schools in the state. They struck a balance between the university as a secular administrative system and the colleges as state approved autonomous corporations for educational purposes. Balance and compromise rather than subordination and centralization characterized the New York solution.

While in New York the plans for a state-wide university system had to take into account the presence of Columbia College and its spokesmen, no such considerations for tradition and pre-existing interests were encountered by advocates of a state university in Georgia. In that state the constitution of 1777 had provided for state-supported schools in each county, and in its statutes of 1780 and 1783 the legislature had expressed support for religion and education as indispensable prerequisites for civil order. In this legislation two graduates of Clap's Yale College had played prominent roles. Lyman Hall of the class of 1747 and Nathan Brownson of the class of 1761 both had turned their backs on much of Clap's presbyterian orthodoxy. They had practiced medicine, served in the Continental Congress and brief terms as governors of Georgia. In 1783 a third Yale graduate, Abraham Baldwin of the class of 1772, had joined them. Baldwin's additional connections with Yale were his service as tutor and his election as Professor of Divinity - an honor he had declined because of his dislike of what he considered the narrow-mindedness of the Yale Corporation. Baldwin had come to Georgia from his service as military chaplain during the revolutionary war and had been quickly admitted to the state bar. When during Hall's gubernatorial term in 1783/1784 the legislature set aside 40,000 acres in newly opened counties "for the endowment of a college or seminary of learning," and on February 25, 1784, created for that college a board of self-perpetuating trustees consisting of the governor ex officio and seven named individuals, Hall as governor and Brownson and Baldwin all found themselves on this board.

During 1784 Hall and Baldwin corresponded with Yale's President Ezra Stiles on plans for a university charter. Baldwin persuaded his colleagues on the board of trustees -- no doubt with the struggle between the Yale corporation and the Connecticut assembly much on his mind -- that sound policy required secular oversight for a college. To bring to life the constitutional provision for state supported schools in every county -- ignored for all practical purposes that far -- Baldwin advocated the creation of a university as a state-wide system of schools. In marked similarity to Jefferson's plans for 1779 he proposed such a state system as a means by which the legislature could "unite [society's] literary concerns and provide for them in common that the whole may find the benefit and no part be neglected, or left a prey to party rage, small private prejudice and contention..." As in New York so in Georgia the university was to be a system of preparatory and collegiate education under secular supervision. A state board of visitors composed of the governor and his council, the speaker of the house, and the chief justice together with the existing college trustees would oversee the university's work. Together the two boards would make the laws and appoint the president of the university, keep themselves informed of the schools in the state, and be authorized to create new ones. Baldwin's suggestions embodies proposals made in 1777 in Connecticut for a two-board system of government for Yale College, ideas of Thomas Jefferson, and arrangements then suggested in the state of New York.

The Georgia legislature officially adopted Baldwin's scheme in the act of January 27, 1785. It confirmed and enlarged the board of trustees of the college and established it together with the visitors as the SENATUS ACADEMICUS of the University of Georgia. The General Assembly reserved to itself the power of repeal of the senate's legislation; all officers of instruction and government were to be "of the Christian religion;" president, professors, students, tutors, officers, and servants were to be excused from military duties; the trustees were forbidden to discriminate against students on grounds of their religion, and the senate was to be responsible for the state's schools as Baldwin had specified. Baldwin served as the trustees' president from May of 1785 to June of 1801, but called them into session only twice within the first twelve years, once in 1786 and again in 1798. During those years the board concerned itself mainly with the academies, rather than the college. By 1794, reported Ezra Stiles, six aca--demies had been opened, yet only three of them could be said to flourish. The Senate did not meet until November of 1799, but in June of 1801 a location was selected for the college, a president was elected, and Baldwin retired from the board of trustees. Within another year instruction began at the college. The University of Georgia, consisting of a number of preparatory academies and Franklin College at Athens, was finally under way. In its organization as an administrative system for preparatory and collegiate education it resembled the University of the State of New York.

Among the plans and proposals for a state system of education the scheme projected by Benjamin Rush for the state of Pennsylvania must rank as the most far-sighted and encompassing. Rush came to his advocacy of a state system from township schools to a university by an indirect route. Disaffected as he was with the influence of the revolutionaries' radical wing he sought for means of educating the state's future political leaders in conservative republican principles. For this purpose he had by 1782 proposed the founding of a college in western Pennsylvania. When on September 9 of the following year the Pennsylvania legislature passed a charter for Dickinson College Rush prepared an essay "to lay before the board of trustees upon the subject of education proper for a college in a new republican state." Rush's plan, like Baldwin's in Georgia, bore resemblance to Jefferson's 1779 proposals for Virginia. Rush envisaged free schools for all children in every township, county academies to prepare youth for college by teaching the learned languages, four colleges in different parts of the state for young men to be instructed in the liberal arts, and one university to present lectures in law, medicine, divinity, the law of nature and nations, and in political economy. The projected scheme was not translated into reality. In Pennsylvania the state university came to be the successor institution to the College of Philadelphia. It was not to be a system of either the common schools or of the preparatory and collegiate establishments.

The most unusual proposal for designing and administering a state system of higher education was submitted in northern New England by John Wheelock, president of Dartmouth College. Wheelock's scheme was, in effect, a design to prevent the creation of a state college in Vermont by preempting the field with the organization of a state system of preparatory and collegiate education by an out-of-state corporation. The trustees of Dartmouth College would train and staff Vermont's university system. In the fall of 1786 Wheelock asked the Vermont legislature for the use of land rights once granted to the Society for the Propagation of the Gospel, and the trustee assured the legislators that the college was not likely ever to become "sub servient to the sinister views of sect or party." If the legislature were to grant his request, Wheelock added, Dartmouth College would educate Vermont residents free of charge and might join with the proposed Vermont state college "in one band of union." Furthermore, the Dartmouth trustees would staff and support one public school or academy in each county of Vermont as well as a university, and would offer free instuuction to all citizens of Vermont at Dartmouth or at the university. In exchange Wheelock wanted "the foreign public rights within the state, and also the state and county rights for the promotion of literature." The Dartmouth trustees would take on the function of a public board for the state of Vermont and would carry out their administration of the University "under the inspection or visitation of the state..." When these proposal appeared in the newspapers they led to accusations that Wheelock was attempting to undercut the creation of a state university in Vermont and resulted in March of 1787 in a rejection of the plan. Thus ended the abortive attempt of the Dartmouth trustees to prevent the founding of a state university in Vermont and to administer the state's projected system of preparatory and collegiate education.

As Wheelock lost his ambitious struggle to provide Vermont's state university, others within the state gained the initiative. A college, named the University of Vermont, was chartered in 1791. Two years earlier General Ira Allen has subscribed £ 4,000 if a university were to be located in Burlington. When the sitex was accepted the assembly passed the charter on November 3, 1791. The document provided for a board of up to seventeen trustees on which the governor, the speaker of the house, and the president of the university were to serve ex officio. As initially named in the charter the ex officio members were joined by a clergyman each of the Baptists, the Episcopaleans, the Congregationalist, and the Quakers, and by six gentlemen of secular occupations. Yet little more was accomplished. By the time the new century began classes had not yet been opened.

As in Georgia and Pennsylvania the Vermont university plans remained administrative blueprints for a while longer, and bore witness only to grand conceptions of public higher education. Nonetheless, the universities in Maryland, New York, and Georgia may serve as the examples of institutional innovation attributable to the ardor of the revolutionary generation for systems fo republican education under state-wide public control.

16. The Legal Status of University and College Corporations: Public or Private?*)

Underlying the struggle for establishing universities under public control in the states of the new nation was the fundamental legal question whether the institutions of preparatory and collegiate education had been civil corporations chartered to govern themselves in the manner of other political bodies such as, for example, incorporated towns, or whether they had been eleemosynary corporations created to facilitate the administration of charities for the education of young men. If they were to be regarded as civil corporations English law and custom would suggest that like the Universities of Oxford and Cambridge they governed themselves under statutes granted by the legislature and they acknowledged that body as their visitor. They would also be represented in the lower house of their respective legislature, as was the College of William and Mary and as Myles Cooper had planned for the American University in the Province of New York. If, on the other hand, their status was to be that of an eleemosynary corporation like that of the colleges within the English universities, they would fall under the specific visitatorial jurisdiction of their founder or his designated successors, save for the legislature's general authority over all the state's subjects. In the American colonies towards the close of the eighteenth century, however, the English distinction between civil and charitable corporations gradually was superseded by a division of corporations into public and private. The civil corporation, by and large, was then designated as public, and the charitable or eleemosynary corporation began to appear as a particular kind of private corporation. The debates, therefore, in the United States over the legal status of colleges or universities came to be couched in the language of public versus private corporations. In these terms the issue became familiar to Americans during the second half of the eighteenth century and the battle's concluding round was to be fought later in the nineteenth century in the United States Supreme Court in the case of the Trustees of Dartmouth College v. Woodward.

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*) Documentation for this section may be found in the footnotes to my "The American Revolution and the American University," _Perspectives in American History_, X (1976), 317-354.

From their European past the colonists had inherited a conception of a university as a civil corporation. The fact that, like many European universities, the American collegiate foundations were held by strong ties of governance to the churches did in no way dim their status as public institutions. In an age of ecclesiastical establishments church and state were, after all, the two great public institutions of the realm, and the term religious did not yet bear the connotation private it was to acquire in the nineteenth century. The colonists therefore assumed that universities were civil corporations with important public functions and responsibilities. They were to insure a supply of well-trained leaders for the offices of state and church. This function the colonists ascribed to their colleges. They did not assign to them the status of charitable corporations which had adequately described the colleges of European universities. American colleges had not in fact been charitable corporations for one simple and sufficient reason: The lack of surplus capital in the colonies made such a method of funding impossible, and the colleges had to rely on grants and gifts from the public treasury. While private gifts were not unknown even during the first one hundred years of American collegiate history -- one thinks of the donations of John Harvard and Elihu Yale -- they were scarcely sufficient without repeated additional legislative grants to start and keep afloat the new collegiate foundations. Finally, the American college stood in place of universities. From a continental European perspective they constituted an arts faculty as *mater universitatis* in the hope that other faculties might in time be added until a full-fledged university existed. In an English view a colonial college was but the first of possible additional colleges which eventually would grow into a federation and form a university. Despite the frequent assertion in the literature to the contrary and despite the eventual repudiation of the college as a civil corporation in the Dartmouth college case of 1819, their historical derivation and the circumstances of their founding argue strongly that the colonial American colleges were seen by their contemporaries as public, not private, corporations.

There had been, however, occasional challenges to this dominant view of the college as a public corporation. The first such occasion had arisen in Connecticut in 1754 when President Clap had made a determined effort to withdraw Yale College from under the oversight of the colony's legislature. He ran into the vigorous opposition of Benjamin Gale, a member of the assembly from Killingsworth. Though Clap appeared to have won his battle in 1763, his victory was hollow, nonetheless, and was followed three years later by Clap's forced resignation. The legislature reaffirmed its control over the college and ordered an annual submission of the college accounts. Gale triumphantly assured Ezra Stiles that the assembly members had made themselves visitors after all. By 1766 Connecticut's college was again supported and supervised by the colony's legislature as its provinical college.

Barely a decade later the assembly made ready to tighten its reins on the college, but the arrival of Ezra Stiles as the new president brought a few years' relative peace. In 1781, however, the eighteenth century's largest freshman class arrived on campus. The presence of 224 students presented a problem to Stil[illegible]d his untried tutors. Student troubles, as Stiles had learned from the experience of his predecessors Clap and Daggett, were not to be taken lightly. Sooner or later the students' complaints were bound to be picked up by others and discussed in the press and the assembly. Fed originally by the dismissals of the old tutors, the students' anger culminated in March of 1782 in the destruction of Old College Hall. As he tells us in his diary, Stiles kept a wary eye on the student societies which he suspected as a source of much of the uproar. But, knowing the corporation's unpopularity in the state, he also kept his ears open to talk outside the college walls. Many in the state thought the college to provide benefits for the rich while being paid for in large measure by taxes on the poor. There was renewed talk that the assembly should contemplate a change in the college charter or the erection of a rival college in Hartford or some other location. Quite correctly Stiles thought that he could sense danger.

The appearance of a series of letters, signed anonymously by Parnassus, in the Connecticut Courant and Intelligencer in February of 1783 signalled the onset of a new wave of attacks. Parnassus spread on his pages a detailed account of the corporation's alleged mismanagement. He charged that the trustees behaved like a private group unrepresentative of the state's various interests. Their instructional program was frozen into a limited curriculum of a heavily clerical cast. The trustees themselves and the academic program they prescribed belonged to a religious seminary, not to a provincial college or state university.

Parnassus, however, aimed at more than reform of the curriculum. He wanted to slay the ghost of Thomas Clap and not leave the slightest doubt that Yale was to be after the Revolution what it had been when it was founded in 1701: A civil corporation devoted to the education and training of the state's professional leadership. The General

Assembly, Parnassus, said, had full powers over public schools and colleges and should see to it that public officials --civilians, in the terminology of the day -- be added to the corporation. A year later Parnassus' cause was aided by Samuel Whittelsey Dana's pamphlet, Yale College Subject to the General Assembly, and by a number of petitions submitted to the Assembly from various parts of the state. The petitioners expressed themselves in terms less hostile to the corporation than Parnassus. They asked [illegible] legislators to confer with the corporation and jointly discuss Yale's future. Perhaps Ezra Stiles' popularity had helped to defuse the issue and to avoid an expropriation of the corporation similar to that suffered by the masters of the College of William and Mary in 1779 and of the trustees of the College of Philadelphia in the same year. In 1784 the Connecticut assembly deferred consideration of the petitions and failed to act on the various reform suggestions. But the issue was not dead, and within another eight years would come to the fore once more.

The eighteenth century's final round in the battle over Yale's corporate status was fought in the early nineties and brought a conclusive victory for the champions of state participation in the government of the college. Judging by the reactions of President Stiles, the initial phases brought great discomfort to the friends of the college. The struggle began with an unsuccessful attempt in the lower house to order another visitation of the college. Though the upper house had squelched the move, the Yale corporation thought it the better part of wisdom to acknowledge the rising clamor in the state for nenewed scrutiny of the college and to signify to the General Court in 1791 their willingness to report to the assembly on the state of the college. This was done in joint meetings in January and May of 1792. The main subject of discussion was the addition of civilians to the corporation. Stiles was deeply worried. He feared that civilians might gain a majority or at least equality, and he was determined to resist such a change in the ancient charter arrangements. He was afraid that to allow civilians on the board would open the doors to jealousy and strife concerning the proportional representation of the various denominations as well as to an abolition of all religious tests for students, tutors, professors, and the president. Stiles saw grievous consequences. The addition of civilians

> will not only wrest the college out of the hands of ecclesiastics, but bring the deistical and mixed characters hereafter ascending into the [Governor's] Council to such a control and influence in this institution as to neutralize and gradually to annihilate the religion of the college, and so lower down and mutilate the course of education, and model it to the taste of the age, as that in a few years we shall make no better scholars than the other colleges, or the universities of Oxford and Cambridge.

Yale not better than Oxford and Cambridge: Scandalous indeed! For President Stiles the prospects of civilian participation in the government of Yale College were horrifying, to say the least.

It is thus all the more surprising to read Stiles' happy and relieved satisfaction when he was notified that at its meeting of May 31, 1792, the assembly had finally taken the crucial step and placed civilians on the Yale corporation. The legislators did not nullify Yale's charter, but simply tied the acceptance by the corporation of a revenue grant to the addition of the governor, lieutenant governor, and six members of the governor's council to the corporation. There was to be no change in the manner of electing the traditional corporation members, and the entire proposal depended for its enactment on the consent of the corporation "in legal meeting assembled." That agreeement was unanimously given on June 26. On September 12 the eight civilians joined Ezra Stiles and his ten clerical trustees for their first corporation meeting under the new dispensation. Stiles had forgotten his former worries and predictions of disaster. He now called the assembly act "a grant and liberal donation and a noble condescension beyond all expectation! Especially," he added, "that the civilians should acquiesce in being a minority in the corporation. It will do; and will be finally adopted and closed with." And thus came to an end the eighteenth century debate over the nature of Yale College as a corporation. Clap's contention that the college was a religious society under the administration of an exclusively clerical board was finally discarded. Instead Yale accepted the pattern set by Harvard College and in use by most other colleges. A joint governing board of magistrates and ministers, civilians and ecclesiastics was the college corporation. Jointly these two groups of men represented the public and gave substance to the claim that Yale College was Connecticut's institution for higher education. Still lacking, however, was an unequivocal answer to the question whether the college was a civil or an eleemosynary corporation. The legislature had made it clear that it regarded the college as a public institution. The legal determination, however, would have to come from a court of law. For this to happen the time had not yet arrived.

A similar though more dramatic battle over the nature of a college was fought in Pennsylvania. There the fate of the College of Philadelphia hung in the balance. The controversy began when the British occupation troops left Philadelphia in June of 1778, and the trustees of the college prepared themselves to meet the inquiries of a distrustful assembly committee. In a report of March 16, 1779, to the committee of inquiry the trustees took the position that the college and academy constituted a charitable corporation under their exclusive jurisdiction. They maintained that their charters of 1753 and 1755 "treat the seminary as a private foundation ... wholly exempt from any state-direction or control." Their institutions had been designed "for the common benefit of a mixed body of people," and had been governed by them in a nonsectarian manner on a "catholic plan." The trustees' view was not shared by many in Pennsylvania's government. On July 8 a request of Joseph Reed, president of the state, persuaded the trustees to postpone commencement exercises and to express their hope that the government speedily proceed in a legal way to question their rights. Only then, the trustees felt, might they be enabled to "take the proper steps to defend their charter according to law." Matters appeared even more threatening when on September 9 President Reed in his message to the Assembly chastised the trustees for not having "sought the aid of government for an establishment consistent with the Revolution, and conformable to the great changes of policy and government." He suggested that "an institution framed with such manifest attachment to the British government and conducted with a general inattention to the authority of the state" did not deserve the government's protection nor enjoy the people's approbation. He added that corporations which "compose a species of internal government" should be subordinate and obedient to the legislature. For three days the question of the college's relationship to the state was debated in the House, and on October 2 a motion passed to prepare a bill that would

> confirm the estates and interests of the College and Academy of Philadelphia and ... alter and amend the charters of the said institution, so as to make them conformable to the revolution, and the Constitution and government of this State.

The assembly refused to refer the question to the Judges of the Supreme Court and rejected a request to lay before the House the relevant documents on which the action was based. Pennsylvania's legislators left no doubt where they stood. They regarded the college as a civil institution of the state under their sole and exclusive control.

In a dissent to the Assembly action ten legislators pinpointed the constitutional issues raised. The house, not having had an opportunity to study the committee report on which their vote was based, was not sufficiently informed of the facts. Similarly, though the judges of the Supreme Court had been invited to attend the proceedings, they had not been permitted to state their views on the law of the case. There had been a total absence of evidence supporting the charges against the college and reason to think that many legislators were motivated by a spirit of intolerance and vindictiveness toward individual trustees. Above all, the dissenting legislators charged, the Assembly had violated the separation of legislative and judicial powers. Quoting Montesquieu and Blackstone the dissenters warned that a union of judicial and legislative power was "of the most terrifying nature" as a threat to liberty and the rule of law. But their efforts were in vain, as were further attempts by Provost Smith and the trustees to gain another hearing. A bill to amend the college charter was passed on November 27, 1779, and only one lonely legislator filed a dissent protesting the haste with which the measure had been rushed through on the last day of the assembly session.

Nothing illustrates better the partisan intent of the Assembly members than their statement of reasons for dispossessing the college and academy trustees. In the act confirming the estates and interest of the college and amending its charter "conformably to the revolution and to the constitution and government of this commonwealth," they repudiated the trustees' declaratory act of 1764. In the declaration of 1764 the trustees had committed themselves in conformance with the English policy of toleration to uphold the original numerical representation of Anglicans and various dissenters on board and faculty. Their motives at that time may indeed have been mixed. Some no doubt genuinely believed in the desirability of interdenominational harmony and cooperation; others may have thought the agreement to be to their denomination's advantage. All to various degrees must have found it advantageous to humor the English authorities and donors and therefore to accept their suggestion. They surely could not have wanted to provoke in Pennsylvania the kind of confrontation between college and assembly they had witnessed in the preceding year in Connecticut, nor to experience a deadlock such as had stymied the founders of King's College in the fifties. Thus they had signed their names to a statement of intent not to narrow the plan of their institution, only to be faced in 1779 with an unabashed and deliberate misconstruction of their very words. The Assembly, implying that the trustees were "dangerous and disaffected men" such as had "troubled the peace of society, shaken the government, and often caused tumult, sedition, and bloodshed," charged them with having "departed from the plan of the original founders and narrowed the foundation of the said institution." Therefore the present board of trustees was to be dissolved and vacated, the declaration of 1764 to be voided, the charters of 1753 and 1755 amended and confirmed in their amended state, and the college erected into a university. On such shaky argumentation did the Assembly base its reassertion of public authority and control over the college.

The change of status for the College of Philadelphia from a private college to a public university was achieved by a substitution of one group of trustees for another. The old trustees were evicted without their consent and on the pretext of having violated the original plan of their institution. The new board was to be made up of six public officials: The president and vice-president of the Supreme Executive Council of Pennsylvania, the speaker of the House, the chief justice, the judge of admiralty, and the attorney-general. To these were added the senior ministers of six denominations, comprising the Episcopal, Presbyterian, Baptist, Lutheran, German Calvinist, and Catholic church, but omitting the Quakers, ostensibly because they had no official ministers. In addition the charter named thirteen individuals, among them Benjamin Franklin, the state's representatives to the Congress, and two state supreme court justices. The trustees were empowered to elect successors to the non- ex officio position, subject to a veto by the assembly. The act also provided for an oath of allegiance to the Commonwealth of Pennsylvania and for financial accountability of the trustees to visitors to be from time to time elected by the legislature. Expressed in their new title "The Trustees of the University of the State of Pennsylvania" lay the central significance of the change: The legislature had asserted that by virtue of the Revolution and the change of government in Pennsylvania and the new confederation the College of Philadelphia under the autonomous rule of its trustees had been transformed into a university under public oversight carried out by public officials on the board of trustees and by state appointed visitors.

The trustees' expropriation in 1779 without their consent and over their protestations did not end the matter. The question of the college's legal status as a corporation soon became a point of protracted controversy. As Clap and Stiles and their trustees in Connecticut, so ex-Provost Smith and his former colleagues on the board of the College of Philadelphia insisted that their charter rights had been violated by the legislature and ought to be restored. They referred to section 45 of the Pennsylvania Constitution of 1776 which, they argued, should protect them and which the assembly had violated. The section specified that

> all religious societies or bodies of men heretofore united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy or could of right have enjoyed under the laws and former constitution of this state.

By accepting President Reed's contention that the college was a civil rather than a charitable corporation the Pennsylvania assembly had ignored section 45. It had raised the legal issue in its starkest outlines: Was the College of Philadelphia a charitable corporation like the colleges in the universities of England, or was it a civil corporation like the two famous universities themselves? If it was the former the legislature was bound to safeguard the college charter in accordance with section 45. If it was the latter, the assembly could rely on its inherent powers of legislative regulation and expropriation. This question would agitate Pennsylvania politics throughout the eighties.

During the decades early years ex-Provost Smith and his trustees did not meet with much encouragement in their efforts to regain their charter rights. The members of the council thought most of the trustees to have been men "hostile to equal liberty, or inimical to the revolution and independence of this state." Corporations, they felt, were "against the spirit and the policy of democracy" because they were "governments within the government."

But matters began to look up for Smith and the trustees when in the fall of 1784 they took their case before the Assembly. Here the committee of the whole found in favor of the College and unequivocally upheld the view that only a court, and not the legislature, could change or abolish a charitable corporation: The General Assembly had done so by "violating that authority under which they derive their own power to make laws." The committee therefore recommended that part of the act of 1779 be repealed to re-invest the college trustees with their former rights and franchises. But they also suggested that the university trustees be allowed to continue their trust. When the matter came up to a final vote nineteen members of the House walked out and pre--vented any action to be taken. For over four more years the college trustees would have to wait for their reinstatement.

By 1788 the time was ripe. Conservatives were in control in the state legislature, and William Smith prepared another legal brief for the trustees. In his Address to the General Assembly Smith rested the case on section 45 of the Pennsylvania constitution. The College of Philadelphia, he argued, had not been constituted for public government and endowed by the public, nor was it subject to the general and common laws of the nation. It had been organized by private persons for charitable purposes. It was therefore a private, not a civil, corporation "wholly subject to the rules, statutes, and ordinances of the founders and the visitors whom they appoint, and to no others." Following Thomas Clap Smith added that the college was also considered to be of a religious nature and therefore, he concluded, protected by the constitution. The act of 1779 was an instance of legislative tyranny, not an act "of men governing according to law." Smith's argument now carried the day. In its act of March 6, 1789, the legislature cited section 45 of the constitution, related the deprivation of the college trustees "without trial by jury," and then restored the rights of the college trustees while at the same time preserving those of the university trustees. After March 6, 1789, both the College of Philadelphia and the University of the State of Pennsylvania lived side by side. The legislature, as a later commentator would say of the Supreme Court, had followed the election returns, and in its own practical wisdom had avoided to face the constitutional and legal issues by permitting both institutions to exist. Finding themselves competing for the limited resources available to them in Philadelphia and Pennsylvania the university and the college in little more than two years began negotiations which on September 30, 1791, led to their union under the direction of the Trustees of the University of Pennsylvania. The board was to consist of twelve trustees from each of the merged schools and of the governor of the state as their president. Except for the governor there were to be neither public nor ecclesiastical ex officio members, but the board was to lay its accounts annually before the legislature. The University of Pennsylvania thus was recognized as a self-governing corporation under its own board of self-perpetuating trustees. Its connection with the state was through the governor and the requirement of annual financial reports. A definitive answer whether the newly constituted university or its two predecessors were charitable or civil corporations, private of public associations was lacking in 1791. The legislature did not supply it nor, as an interested party, could it have done so. The question would ultimately have to be answered in a court of law.

From the perspective of the colleges' subsequent history in the nineteenth and twentieth centuries the most remarkable aspect of the legal difficulties experienced by the colleges during the Revolution was that settlements were sought not in a court of law but, as in

Connecticut, Pennsylvania, and Maryland, were hammered out in legislative assemblies. In Massachusetts and North Carolina popular feelings were vigorously expressed and given voice in the legislatures. In New Jersey and Rhode Island public debates were few and insignficiant, and the colleges agreed with the legislatures on the few changes necessary to adapt to the new conditions of the revolutionary governments. In all these instances legislatures and college corporations came to agree, some sooner and some later, on the inviolability of corporate charters. These charters defined and secured the colleges in their rights and privileges. They were to be honored and altered only with the mutual consent of legislature and corporation. Before the end of the century only one legal challenge to these understandings was brought before a court of law. This happened in Virginia; but the judge refused to address himself to the question whether a college was a civil or an eleemosynary corporation or an institution of public or private nature. Whatever view had been adopted on these questions came as the results of political conflict and compromise, and were upheld only by the assent of those most intimately involved.

The Virginia case occurred as a sequel to the visitors' closing of the grammar school of the College of William and Mary. John Bracken, the school's master, had been dismissed from the college corporation when his school and position were abolished in 1779. Eight years later he brought suit against the visitors. The Virginia General Court asked the visitors to show cause why a writ of mandamus restoring Bracken to his position should not be issued. The case was forwarded to the Court of Appeals, and this court denied the writ "on the merits." That is to say, the court found that in dismissing Bracken the visitors had acted within their authority. In 1797 Bracken filed a second suit for recovery of his salary, but lost this also on appeal. For our discussion of the college's status in law the interest lies in the comments of the court's president, Edmund Pendleton. Pendleton emphasized that Bracken had lost his first case on the merits, and not on the strength of the reasoning of his opponent's counsel, John Marshall. In an argument foreshadowing his later decision in the Dartmouth College case Marshall had held that the Virginia court had no jurisdiction to issue a writ of mandamus because the college was an eleemosynary corporation under the control of the visitors from whose act there was no appeal. Pendleton let it be known that neither he nor some of his colleagues on the bench thought that the College of William and Mary was a charitable corporation. They rather assumed that it had been founded publicly and that there was no reason to suppose the court had denied the writ on the grounds "that the General Court had no power to intermeddle with the affairs of the College upon the English precedents applying to private donations for colleges." Pendleton, it appears, shared Jefferson's views that the College of William and Mary was a civil corporation under the oversight of visitors appointed by the legislature. Yet he noted the hesitation of his colleagues to rule on this question and to endorse the contention of John Taylor, counsel for John Bracken, that the college was, "in many respects in its origin, a corporation for public government, ... whose proceedings must therefore be subject to the control of this Court." Pendleton might have agreed, but he refused to admit this argument as applicable to the case before him. In 1797 in the only legal proceeding among the many legislative debates on the nature of a college as a public or private foundation the court shrank from a ruling. The new century would begin with the issue legally still unresolved.

When we now survey the academic landscape at the close of the eighteenth century and assess the impact of the Revolution on the institutions of higher education we note as the single and most obvious fact demanding acknowledgement that all of the eight provincial colleges and Queen's College in New Jersey survived the ordeal of battle and governmental change. In marked contrast to what had happened so frequently in continental Europe the Revolution did not abolish a single college or university, nor did it subordinate these institutions to the direct authority of the states as administrative departments or agencies. American colleges exhibited a remarkable resilience. This was true even though many saw their students and faculties dispersed and their buildings destroyed by armed conflict or its side effects of occupation and neglect and all had to adjust to the changes in territorial sovereignty. In the face of material and legal challenges the colleges held high the banner of charter rights and claimed immortality and invulnerability under the law. An English tradition of the common law sanctity of corporate institutions survived all the vicissitudes of the revolutionary turmoil and belied the extravagant claims advanced by some commentators on the influence of French revolutionary thought and practice. There were disputes between governing boards and revolutionary legislatures, to be sure, but in the end the colleges survived with their charters intact or changed only with the consent of their governing boards. They also persisted in the face of threatened competitition from national educational insitutions and of the actual rivalry of newly created colleges. As successor institutions to the provincial colleges of the colonial period they reaffirmed their civic responsibilities as public colleges or universities of their new states.

In many colonies the colleges were concerned with more than survival and continuation of their services. In Massachusetts and Connecticut, Virginia and Pennsylvania they added to their functions of providing an education in the liberal arts opportunities for professional training. The introduction of medical instruction in Philadelphia and New York in the 1760s had first signalled this transformation of colleges into universities. In the seventies and eighties professorial chairs in many new fields and faculties of law and medicine were added in several states to respond to the demands for professional training. In New York, Georgia, Kentucky, and Vermont ambitious proposals were advanced for state-wide systems of Latin preparatory, collegiate, and professional education under ublic direction and control. The early years of the Revolution witnessed a rising sentiment among the people in favor of providing facilities for higher education at the most advanced level. Though the numerical impact of these innovations was limited and insignificant in relation to population growth, and though many of these projects never moved beyond the planning stage, their existence testified to an initial determination among the revolutionary generation to expand and improve rather than reduce and limit the institutions of higher education. These initiatives, to be sure, lost momentum in the eighties and nineties, but for a time they reflected accurately the revolutionary leaders' enthusiasm for higher education.

Significant for the legal history of American higher education was the fact that the conflicts over charter rights and state power were fought out in the legislative bodies of the states and not in the courts of law. Having commenced their careers as provincial institutions the colleges -- with the celebrated exceptions that contested that assumption -- saw themselves as public institutions under the oversight of their respective assemblies. They turned to them not only for financial support but also for the settlement of their jurisdictional and legal disputes. They perpetuated a colonial tradition in which the legislature as General Court deliberated on legislative as well as on judicial matters, and in which it jealously guarded its judicial prerogatives over its provincial college against the interference of local courts. An incident of this kind had arisen as far back as 1718 at Harvard when a degree candidate by the name of Pierpont had brought suit against tutor Sever in Middlesex County Court. His action threatened to raise and settle questions about the college charter before an interior court, and this prospect prompted the corporation to do its best to squash the proceedings. They were successful in this, and subsequently at Harvard in 1734 and at Yale in 1745 the revised college laws prohibited students and their parents or guardians from taking college matters to court without permission of the corporation. This practice of legislative judicial prerogative over academic affairs was challenged during the Revolution when theories of the division of powers in legislative, executive, and judicial were being discussed. The strength of the traditional view is illustrated in the Bracken case when the decision was "on the merits" and the judge carefully avoided to speak on the underlying issue of the legal nature of a college. A change did not come until after the turn of the century when the first major college case came to be decided in a state court. Until then college disputes remained in the purview of the legislatures.

A direct consequence of the discussion and settlement by the legislatures of the colleges' legal rights under their charters was the colleges' increasing vulnerability to partisan political pressure. The turn-around in the fortunes of the College of Philadelphia was a case in point. It illustrates the ebb and flow of majority opinion and its impact on the fate of the college. Perhaps it is unrealistic and naive to assume that had the courts been allowed to rule on the questions of charter rights the fluctuations would have been avoided. But it must surely be admitted that even if one grants the power of partisan views in the courts, the legislatures' direct dependence on popular opinion permitted the latter far greater play in its decisions. Given the strong ties to the parties in power which the colleges enjoyed as provincial institutions and declared training grounds for the future political and professional leaders, it should not surprise us to hear the colleges denounced by many as bastions of aristocratic privilege and Federalist power. In Maryland, Massachusetts, northern New England, New York, Georgia and North Carolina bitter debates broke out between the defenders of the colleges and the champions of town schools and academies. The former continued, as it were, a traditional argument harking back to the Reformation and before for the public's responsibility of training their leaders, whereas the latter appropriated to themselves the revolutionary rhetoric demanding that the state's resources be made accessible to all for education on every level. Such division of opinion discomforted such college champions as Thomas Jefferson, Ezra Stiles, and Benjamin Rush who, to many "republicans," appeared as defenders of aristocratic privilege. Spokesmen for the common people were not impressed with the calls for professional training and certification in law and medicine which accompanied the pleas for college reforms. They saw such appeals as infringements of opprrtunity rather than as provision of need services and protection of the people against exploiters. The initial moves, therefore, toward university status for the colleges through the creation of professorships or professional schools connected with the colleges soon met with opposition. The same could be said for the plans of state-wide university systems of public education on the preparatory and collegiate level. Legislatures failed to appropriate the necessary funds. As the eighties came to a close it became apparent that the states' colleges and universities were vulnerable in many ways to the whims of partisan politics, all the more so when they had come to look upon their legislatures as the fonts of their authority and support.

Ambiguity thus characterizes the situation of the colleges and the new universities at the end of the Revolution. There were many initiatives undertaken in the states to expand the curriculum, add professional faculties, or project comprehensive systems of preparatory and collegiate education. It was also apparent that legislators in many states were ready and even eager to take the colleges and universities under their wings and support them financially. Such public sponsorship appeared to many as a fitting demonstration of the spirit of the Revolution. But there were counter-indications as well. Public directions and support of colleges and universities served the well-born and affluent and detracted attention and support of the lower schools. Radicals in the revolutionary tradition tended to oppose institutions of higher education as elitist and as supportive of counter-revolutionary, conservative tendencies. They objected to programs of public support for colleges or universities. As a result the picture remained cloudy and beset with contradictions. Benjamin Rush would ask simultaneously for a federal university and a state university while he campaigned vigorously for a college under private auspices in western Pennsylvania. In each case his motives were politically conservative and his intent to indoctrinate the young men of Pennsylvania with republican principles. Left to the push and pull of contending parties higher education in 1780s presented many possibilities and high potential. Colleges and universities were here to stay, but what shape they would take in the future and whether they would fare better and serve the country better as public or private institutions remained an open question.

17. The Eclipse of Public Universities: Maryland and Virginia

Despite the resurgence of interest in public colleges and universities during the Revolution, the decades from 1780 to 1820 witnessed the decline of support for public institutions of higher education and a related phenomenon of far greater significance for the future of American higher education: The birth of the American independent or private college. The first development may be seen in the slow weakening of the public colleges of the University of Maryland and in the prolonged birth pangs of the University of Virginia; the second in the founding and early history of independent colleges in these two states. While the first will occupy us in this section, the second was of larger significance for the history of higher education, and we shall turn to it in the next section.

In Maryland the discussion concerning continuance of public support to the University of Maryland and the eventual defeat of this policy coupled with the legislature's decision to grant aid to grammar schools and county academies present us with a case study in the eclipse and decline of the inherited conception of a state's commitment to public higher education. The first University of Maryland had come into being in 1785 thanks to the efforts of William Smith, the provost of the College of Philadelphia, deposed by the Pennsylvania revolutionaries for his Tory sympathies. It consisted of two independently organized colleges, Washington College at Chestertown on Chesapeake's Bay's eastern shore and St. John's College at Annapolis on the western shore. This college confederation capitalized on traditional views of the function of higher education, and redefined these to make them fit the new legislature's views on public commitment to higher education. The success of this adaptation of revolutionary sentiment to traditional practice was demonstrated when the legislature committed itself to annual appropriations of £ 1250 in the case of Washington College and of £ 1750 to St. John's College. But this public largesse was not to last. Already by December of 1785 the governors of Washington College found it necessary to protest attempts in the legislature to undo the permanency of annual funding. From 1786 to 1790 similar remonstrances came annually from St. John's College, which in 1790 persuaded both House and Senate to repeal a 1788 resolution "suspending the funds appropriated to Saint John's College." In 1791 it was again the visitors of Washington College who suffered anxious days when the assembly attempted to repeal the college funding act and instead "to apply the funds to the use of the poor or the respective counties of the eastern shore." In the winter session of 1793 when a similar move to divert the college fund to the use of county academies actually passed the House, the visitors of St. John's College were not even allowed to appear through their counsel before the House to defend themselves. Three years later the legislature passed a law authorizing the establishment of grammar schools in each of the counties, ignoring protest memorials by the college visitors. In 1798 it took its first direct swipe at Washington College. It discontinued the amount of £ 500, "part of the sum heretofore appropriated to Washington College ..." The final blow fell early in 1806 when Washington College's remaining annual grant of £ 750 and St. John's appropriation of £ 1750 were suspended and ordered to "remain in the treasury, subject to the appropriation of the legislature to literary purposes, and for disseminating learning in the several counties of this state, and not to other or different purposes." In the same act the legislature also abolished the University of Maryland by dissolving the union of the two colleges. The colleges were permitted continued existence under their individual charters. But the [illegible] state university annually supported by state tax funds had been given the coup de grace.

After the dissolution of the university and the repudiation of the annual grants the fate of the two colleges was not a happy one. The visitors of St. John's College thought it necessary to close the college temporarily, and for a decade Washington College was little more than an academy. Only three students graduated with bachelors' degrees in Chestertown between 1805 and 1820; in Annapolis the number came to 14. By 1812 the state resumed subsidies on a reduced scale, authorizing $1,000 annually for St. John's College and $800 annually for Washington College. It refused, however, to allow itself to be sued by the visitors of the colleges, and successfully resisted a judicial inquiry into the legality of its 1805 act invalidating the annual payments. In 1819 the St. John's visitors published a memorial in the wake of the Dartmouth College case decision, denying the state's power "to revoke the grant or in any respect to alter the charter of the college without their [the visitors'] consent." It was to no avail. Not until the 1830's and later would the state consent to make partial amends, even then demanding the visitors' agreement to forego any further claims based on their original charter rights. Within roughly two decades from the mid-seventeen eighties to the mid-point of the nineteenth century's first decade popular sentiment in Maryland concerning higher education had undergone a decided change. A state university as successor institution to the provincial college of the colonial period had obviously lost support and favor among the people and its representatives in the legislature.

The decisive element in this change had been a growing popular resentment of colleges as institutions for the state's elite, paid for and supported annually by public taxes. Even before 1785 Maryland's debtors had agitated against the colleges and had demanded that the appropriations be spent for relief of the poor. Yet it was not for poor relief but for the support of county academies that the college funds were diverted in 1798 and 1806. Ignoring the agitation of the eighties the legislators took up the cause of Maryland's middling people which had been expressed most thoroughly and thoughtfully by Samuel Knox in 1797. Knox, an Irish-born and Scottish-trained Presbyterian minister in Bladensburg, had entered his "Essay on the Best System of Liberal Education Adapted to the Genius of the Government of the United States" in a contest sponsored by the American Philosophical Society. Emphasizing the need for preparatory education Knox deplored the contrast between "one or two pompous edifices and expensively endowed seminaries" and the absence of "means of establishing and providing proper subordinate nurseries of students prepared for entering and attending such dignified seminaries." In excoriating the state of Maryland Knox minced no words:

> In all ages it has been the policy of those governments that existed by the slavish ignorance of the people to establish one or two sumptuously endowed schools for the sons of fortune and affluence, the expecting brood of despotical succession, leaving the canaille, the ignorant herd, to live and die, the profanum vulgus, the despised, enslaved, and stupid multitude.

He returned again and again to his indictment of those who favored the support of "one or two schools or colleges," and pleaded the cause of those "who are most likely to be deprived of the advantage of such an institution." When in 1806 the Maryland legislature diverted the funds previously spent on the colleges in Chestertown and Annapolis to the support of county academies Knox could take much satisfaction. He had given articulate voice to the complaints and resentments of Maryland's middle classes, and he had helped to slow down materially the state's support for collegiate institutitons patronized and utilized chiefly by its wealthy citizens.

In Virginia a similar trend away from state support and backing for the College of William and Mary and a tendency to look with favor upon the establishment of academies and colleges in different parts of the state became manifest in the eighties. The protagonists in the battles that were to erupt over these issues were Thomas Jefferson and the presbyterian clergy. Jefferson held on to the concept of the state's responsibility for the higher education of its future civil and professional leaders and sought to reform the College of William and Mary as a state institution. When he failed in this attempt he began a long crusade to create for Virginia a new state university. This institution was eventually chartered in 1819 and opened under his direction in 1825. The Presbyterians initially rejected the concept of a state sponsored college. They took it as axiomatic that due to its past history the College of William and Mary was bound to favor the Episcopaleans. They reacted against the notion of a church's or denomination's stewardship over a public institution, a notion that had been in vogue in the eighteenth century under the toleration with preferment policies of established churches. Being loath to concede the responsibility for the education of their young men to another church or to the state, they began to found academies and colleges under their own initiative and direction. They pressed their opposition to public supervision or denominational control of a state college particularly hard in states where, as in Virginia, they found themselves or thought themselves to be in the minority and had to contend with an Anglican establishment. Like the Dutch Reformed maverick Theodore Frelinghuysen in New Jersey in 1755, the Virginia Presbyterians in the eighties were willing to build their own houses of learning.

They were more than willing to accept the help of Episcopaleans and other Protestants as long as it was understood that their colleges, though not legally under church control, were governed by trustees of their denomination.

Jefferson had begun his campaign for the revitalization of the College of William and Mary when he served as one of the college visitors. In 1778 and 1779 as part of the proposed revision of Virginia's laws Jefferson had drafted a bill for amending the college constitution. In this document he stated that since the college had been a public rather than a private foundation it should be under public direction and be aided and improved by the legislature. Jefferson reaffirmed the traditional purpose of a college: to endow with science and virture the future legislators of the country. To accomplish and safeguard that objective the bill prescribed the annual election of five visitors by joint ballot of the two houses of the legislature. These visitors or governors, Jefferson insisted, were to be the lawful successors of the first trustees. They were to be free of the restraint imposed in the past by royal prerogative and by the canons of the Church of England. They were to be supplemented in their task by three chancellors who were to exercise judicial functions. Finally, the corporation itself was now to consist of eight professors, one of whom was to serve as college president. In this bill Jefferson expressed a thoroughly traditional concept of a college. He sought to preserve the institution as it had emerged during the Reformation and developed in the provincial colleges of the colonial peridd. The Revolution had broken the bond that tied the College of William and Mary to the Crown and Church of England. It had put in their place the people of Virginia represented in their assembly. As Jefferson saw it, the College of William and Mary would continue to play its role as a public institution.

Jefferson soon found that the Anglican origins of the College of William and Mary and the suspicions this aroused in many hampered and made altogether impractical his hopes for transforming the college into a public university. The Presbyterians feared that the plan would turn the college into a state university with the Episcopaleans gaining control over the state's preparatory and collegiate education. This is what Samuel Stanhope Smith, 1769 graduate of the College of New Jersey and later professor and president of that institution, wrote to Jefferson in 1770 from his post as rector of Hampden-Sydney Academy, a presbyterian preparatory school. Referring to Jefferson's proposals for the diffusion of knowledge, a companion piece to the college bill, Smith warned that the proposal would only alarm the Presbyterians because "in their view it will be erecting a noble fabric upon too contracted a bottom, and they will oppose it." Smith suggested to seek first a union of Episcopaleans and Presbyterians, but with this proposal he did not speak for the majority of his fellow denominationalists. Virginia's Presbyterians would not so easily overcome their suspicions of the Episcopaleans.

As a result of this presbyterian opposition Jefferson gave up his hopes of transforming the College of William and Mary into a state university. Instead he began to harbor thoughts of establishing a new institution of the higher learning away from "the bilious diseases" of the James River country in a more central location further north. This was to be a university "on a plan so broad and liberal and modern as to be worth patronizing with the public support, and be a temptation to the youth of other states to come and drink of the cup of knowledge and fraternize with us." Jefferson was not alone with these thoughts. In December of 1805 the Richmond Enquirer printed a call for subscriptions to found a university in the state. Volunteering $2,000 of his own money the writer implored the legislature to be generous in setting up a college " by law and by example." Less than a month later the assembly appointed a committee to prepare bills for the establishment of a University of Virginia and for a subscription drive for its benefit. The bills never reached the floor, however, and a good many years were still to pass before the institution began to take shape.

In the meantime the College of William and Mary encountered difficulties not unlike those experienced by the two provincial colleges in Maryland. In 1779 the visitors attempted by a thorough reorganization of government, administration, and curriculum to adapt the college to the changed circumstances of the Revolution. They abolished the grammar school and instituted instruction in modern languages and in the professional fields of law and medicine. Students were permitted to enter the college without knowledge of the classical languages and the professional courses without previous study in the college. They were free to select courses or programs of study of their own choice. There was not requirement for a fixed number of years of attendance. Degrees were to be awarded upon the student having gained mastery of his subjects and passed the examinations. The college also freed itself of the responsibility for providing room and board and turned these matters over to arrangements made between the students and a steward. But despite these innovations the college did not flourish. As President Madison confided to President Stiles of Yale, much of the difficulty stemmed from the loss of public revenues. These had declined from an annual £ 5000 to £ 6000 before the Revolution to £ 500 in 1780. In addition, much like in Maryland, widespread distrust persisted against the college's inheritance of Anglican leaning and of its close association with the Virginia gentry. Ironically enough, this Anglican connection brought no compensating benefit to the college, since Virginia's Episcopaleans tended to distrust the college faculty for its presemed deistical sympathies. The ventures into professional education also did not lead to long-range advantages. Medical training ceased when Professor McClurg moved to Richmond in 1783, and legal instruction shared this fate with Professor Whythe's similar move in 1790. The collegiate reforms, then, only meant that the college had become little more than an academy. As such it continued its function of providing advanced education to the sons of the Virginia gentry. Compared to the support Presbyterians were prepared to give to academies and colleges under their sponsorship, the College of William and Mary had little to show. As the once acknowledged provincial college of Virginia it encountered years of neglect after the Revolution. As the new century began the era of publicly supported colleges had come to a close in both Virginia and Maryland.

Jefferson's plans for a state university, however, were beginning to take concrete shape when on March 25, 1814, the trustees of Albemarle Academy -- an institution then existing on paper only -- nominated him and several other Virginians to membership on their board. When he accepted the invitation Jefferson left little doubt that he had more in mind than the welfare of a non-functioning, isolated academy. He had found an opportunity to bring his university plans back to life. On September 7 he outlined to Peter Carr a comprehensive system ranging from elementary schools to what he called "general schools" and professional schools. For a new university he proposed the general and professional schools as constituent parts. With this scheme in mind he helped draft rules and laws and petition the legislature for a charter. On February 14, 1816, House and Senate established Central College in place of Albemarle Academy. The charter placed the government in the hands of six trustees originally to be appointed for three year terms by the governor and thereafter in case of vacancies. The visitors were to select college treasurer and proctor, the institution's financial and legal officer respectively. They were also to institute professorships. The charter leaves little question that Central College was not meant to be anything other than a state college or university.

Unlike Hampden-Sydney College or Washington College, Central College was neither privately funded, governed nor supervised. With its projected professional professorships it was a state university in embryo. It had neither an incorporated faculty as the College of William and Mary, nor an incorporated board of trustees. It received all of its power from the governor through an apopinted board of visitors. It appears as though Jefferson had sought by any means to forestall any future claim to corporate independence on the part of faculty or governing board.

A similar trend of thought leading towards the establishment of a state university also manifested itself in a report Governor Wilson C. Nichols submitted to the General Assembly as president of the State Literary Fund. In this document Governor Nichols recommended the creation of a University of Virginia to put to better use at home the money spent abroad by Virginia youth seeking a higher or professional education. "The young men of our country," wrote Nichols, "by leaving their own state before their judgements are formed, will frequently acquire elsewhere habits and opinions uncongenial with those of their fellow-citizens. Estranged by absence from the customs and principles of their parents and their ancestors, they return in some degree aliens to their native land." The governing system Nichols proposed for the university was remarkably similar to that just instituted at Central College. The governor with the advice of his council was to appoint fifteen visitors who together with the two senior judges of the Court of Appeals, the governor, and one of the directors of the Literary Fund were to make the laws and appoint president and professors. He also suggested the establishment of several state fellowships for future teachers and professors. Somewhat later, early in 1817, another bill for a state educational system was passed in the House, but failed in the Senate. This bill, introduced by Charles Fenton Mercer, placed far greater emphasis on the local schools and provided for their support by the literary fund. Jefferson did not favor it, beaause it would leave no revenue for the university. In its place Jefferson drafted another bill in which he detailed two options for the creation of a university. In one, the Board of Public Instruction would appoint eight persons as a board of visitors for the university. In the other, the visitors of Central College would vest the property and rights of the college in the state to be appropriated to the university. In either case the visitors of the university were to come under the supervisory control of the Board of Public Instruction. In Jefferson's bill as well as in the report of Governor Nichols the same steady emphasis on state control over the university's governing board prevailed.

Similar sentiments were expressed in the report of the visitors of Central College of January 6, 1818, addressed to the speaker of the house. The visitors, of whom Jefferson was one, emphasized that they had been appointed by the governor who himself had been elected by the representatives. This was done, they said, to divest the college "of all local character and control, and to place its direction under the will of those who represent us." A campaign for private subscriptions had begun, but more funds were required than could reasonably be expected from that source. Referring to the Mercer bill, the visitors noted the suggestion for a combination of private and public funding. They found the suggestion "completely fulfilling the view of our institution" and, to prove their sincerity, they offered to transfer to the state all property and rights of Central college, if it was the legislature's intention to establish a state university and to adopt for its location the site of Central College. The next steps followed quickly. On February 21 the legislature passed a bill which appropriated part of the income of the literary fund for "The University of Virginia" as soon as a board of commissioners had agreed upon a location. The same bill also placed the university's government in the hands of thirteen visitors who were to be appointed for terms of seven years by the president and the directors of the literary fund. The visitors then were to elect one of their own as rector of the university and as "The Rector and Visitors of the University of Virginia" to serve as the university's incorporated governing board. As if to underscore once more the public character of the institution the bill's closing sentence read: "The said University shall in all things, at all times, be subject to the control of the Legislature." The commissioners appointed under the bill with Jefferson as their chairman favored the site of Central College as well as the arrangements for its buildings. As the purposes of the university they listed objectives of university and professional training: The education of statesmen, legislators, and judges; instruction in the principles and structure of government, international and municipal law, and a republican spirit of legislation; the promotion of agriculture, manufacturing, commerce and "well informed views of political economy." To these they added the familiar goals of a collegiate education: to develope the reasoning faculty, enlarge the mind, cultivate morals, and instill precepts of virtue and order. They stressed that an institution of the kind contemplated either had to benefit from public patronage or could not exist at all. Having in mind no doubt earlier complaints against the College of William and Mary, the commissioners warned against offering language instruction that properly belonged to a grammar or preparatory school. They likewise recommended against the appointment of a professor of divinity, preferring instead a professor of ethics. They signed their report on August 4, 1818. The way appeared clear now for the University of Virginia to be chartered and opened.

The remaining obstacles in the legislature stemmed from the advocates of competing locations. Staunton and Lexington each had their spokesmen. But in the end, on January 25, 1819, the bill passed into law. It placed the university under a government of seven visitors appointed by the governor with the advice of the Council. The visitors were to elect a rector from among themselves. As in the bill of 1818 the University was to be "in all things, and at all times, ...subject to the control of the legislature." It should be noted also that neither in the charter for Central College nor in the charter for the University of Virginia was the board given the right to confer degrees. The university charter, however, authorized the visitors to "give to those who excel in any branch of science there taught such honorary marks and testimonies of approbation as may encourage and excite to industry and emulation." Again we see Jefferson's hand in these provisions. He intended to liberate the students from the "tyranny of the curriculum", the lock-step uniformity for all students in vogue at nearly all colleges of the country. At the University of Virginia students were to be free to select their school and pursue its field of study, provided only that they were sufficiently well prepared to benefit from the instruction and that they enrolled for a minimum of three classes. No unvarying time sequence was required for graduation. To qualify for a diploma the student had to show his mastery of his field and of Latin in an examination. When he had satisfied the majority of the school's faculty he was then awarded the diploma and the title Graduate of the University of Virginia. Following quickly upon the chartering of the university the transfer of authority from the Visitors of Central College to the Visitors of the University of Virginia was accomplished in February and March of 1819. Several years, however, still had to pass before instruction got underway. On March 7, 1825, the university opened its doors to students.

With Jefferson as rector at the helm the university at Charlottesville presented to the world a close approximation to the ideal type of a state university in a republican society. Students were permitted to elect their studies, and professors were challenged within each school of the university to devise the best and most appropriate ways and means of teaching their speciality. Only in the School of Government, comprising the study of political economy, the law of nature and nations and history together with politics and law, was Jefferson unwilling to give the faculty a free hand. Here, he wrote to his friend Joseph C. Cabell, the danger of heresies being taught made it a duty for the visitors "to lay down the principles which shall be taught." The University of Virginia was to be dedicated to keeping alive "that vestal flame" of republicanism which nurtured free institutions, Jefferson wrote a year later to his friend James Madison. That was its supreme mission. As a public institution without ties to and independent from any denomination it was to be a secular church zealously guarding the transmission of a republican political philosophy. With the Revolution the content of the nation's inheritance had changed from Toryism to Whigism, from monarchism to republicanism. But the university's function as a public institution had not. As before it was to educate the country's future governors in the nation's public philosophy. For Jefferson and his republican friends the University of Virginia could accomplish this only as long as it remained or was created as a public or state institution.

18. Independent Colleges and Proprietary Professional Schools: Virginia and Maryland

In the decades from 1780 to 1820 the independent or private American college made its appearance. It soon outranked in number and in the diversity of its institutional structure and governance the provincial colleges of the colonial period and the public universities of the new states. Only a minority of the some three score colleges and universities, theological seminaries and professional schools of medicine and law founded between 1780 and 1819 conformed to the colonial pattern of public sponsorship, oversight, or direction.

Though in the middle colonies the heart of the opposition to traditional views of higher education as public responsibility shouldered by state government came from the advocates of church-related academies and colleges, it received support also from popular democratic elements suspicious of the social exclusivity and angry over the geographical remoteness of the older colleges. As fundamental issues of social and educational policy were debated in the assemblies and constitutional conventions in the several states as well as in the newspapers and other public fora, and as more and more schools of preparatory and collegiate education were founded by clergymen and church members, it was only natural that the relationship of these academies and colleges to the older provincial colleges and to the state government came under examination. It was perhaps inevitable that this examination would encourage claims to state support from many of the new schools, and that their demand for state recognition and aid would dovetail easily with the revolutionary rhetoric demanding increased educational opportunities in every section of every state. Locally or denominationally sponsored academies and colleges contrasted in their easy accessibility with the exclusive character of the older provincial colleges. The alliance of denominational and democratic-popular interests turned against the traditional views of Jeffersonian Republicans upholding higher education as a state responsibility.

The fading of the colonial view of higher education as a public responsibility and the emergence of new types of collegiate and professional institutions sponsored by groups with particularistic interests may be observed best in Virginia and in Maryland. In these two states we encounter the early appearance of denominationally and independently sponsored colleges and of professional schools. These institutions came to compete with the already existing older colleges founded in the tradition of provincial or state institutions. In Virginia they challenged successfully the pre-eminence of the College of William and Mary, and in Maryland they detracted from the public attention until then bestowed on Washington College in Chestertown and St. John's College in Annapolis. The new colleges in Virginia had been founded originally as presbyterian academies to train boys for entrance to the College of New Jersey. As they prospered and as the Presbyterians were apprehensive of episcopalean attempts to monopolize higher education in Virginia, the presbyterian backers of the academies sought to transform these institutions into colleges or to give them a collegiate reputation. In Maryland both Methodists and Catholics began with preparatory training for their youngsters and then attempted to elevate their academies into colleges. But in this state there were endeavours underway of a different sort as well. The Catholics wanted to provide professional training for their priests in theological seminaries, and the physicians wanted to do likewise in a medical school. In addition a group of civic-minded representatives of different denominations in the city of Baltimore embarked on the sponsorship of an independent college supported neither by a governmental body nor by a church. Except for a law school and including a state university -- Jefferson's University of Virginia -- the historian may find in Virginia and Maryland every type of new collegiate or professional school chartered in the United States before 1820. These two states, therefore, provide a prime field for an analysis of academic institutional innovations in the four decades following the Revolution.

The new denominationally sponsored colleges made their first appearance in Virginia. Unlike nearly all of the provincial colleges of the colonial period they were neither opened nor first chartered as colleges but grew out of already existing Presbyterian academies. Two of these had been founded initially by individual ministers with the support of presbytery or synod in Virginia, and four more were to be so founded and raised to college rank in Tennessee. Their purpose was to give college preparatory instruction to young men intent upon entering the ministry or careers in law or medicine. These institutions did not limit themselves to offering ministerial training. Even though at Hampden-Sydney in Virginia a theological seminary would evolve in the 1820's, these academies should not as a rule be viewed as forerunners of the theological seminaries or divinity schools. When in the 1780s and thereafter they were transformed into colleges by their state legislatures, their degree-granting status committed them legally to a liberal arts curriculum. Their graduates, however, frequently remained on campus as tutors of undergraduates and themselves received theological instruction from the college president. This practice, of course, had been commonplace in the older provincial colleges as well. In the 1780's the presbyterian academies chartered in Virginia constituted a departure from the dominant colonial practice of launching colleges. Together with the earlier church-sponsored foundation of Queen's College in New Jersey they were the forerunners of the American denominational college of the nineteenth century.

As is so often true when innovations are considered, the presbyterian initiators of the Virginia academies had ambivalent feelings concerning their own readiness to challenge tradition and strike out on their own. At Hampden-Sydney in Prince Edwards County they desired the school to be an alternative to the College of William and Mary. At the same time they sought the cooperation of Anglicans to avoid that "too contracted a bottom" of which Smith had written to Jefferson. When at the time of Smith's rectoral appointment in 1775 the Hanover presbytery turned the administration of the school over to a board of trustees, Smith sought to allay fears and suspicions of continuing presbyterian rule. In a statement published in the Virginia Gazette in December he assured his readers that the presbyterian clergy "have now yielded the power of visitation and of managing the general concern of the academy into the hands of trustees, who are chiefly members of the Church of England." The presbytery, however, reserved for itself "forever the privilege of choosing the trustees and the rector with his assistants." To persuade the parents of prospective students and future patrons of their honorable intentions the members of the presbytery also issued a public declaration in which they assured their readers that all youths sent to the academy "of every denomination shall fully enjoy their own religious sentiments and be at liberty to attend that mode of public worship that either custom or conscience makes the most convenient to them. The members of the presbytery evidently hoped that it might be possible for a school staffed and supported financially by Presbyterians to be found acceptable by the parishioners of other denominations. This, after all, had been the guiding idea of the English notion of toleration with preferment. It should not give offense, the Virginia Presbyterians reasoned, to other Protestants. They would put these assumptions to the test once they were ready to petition the legislature for incorporation of the academy as a college.

When the Virginia legislature in May of 1783 granted a charter to

Hampden-Sydney this institution became the nation's eleventh college. After Washington College in Maryland it was the second college foundation to be added to the colonial nine. The charter made no mention of the Hanover presbytery and no affirmation of its earlier claim to select forever trustees, president, professors and tutors. There was no indication to be found in the document that the college was in any way related to an organized denominational body or church, nor did it contain any reference to religious obligation or loyalty. But there was an exhortation to the trustees to probe the secular loyalties of the professors. In leaving unchanged the twenty-seven member governing board of the academy the charter, nonetheless, insured that Presbyterians remained in control of the college. The college trustees were given the right to examine degree candidates, sign and confer degrees, elect, commission, and remove president and professors "at any time, on good cause shown ..." With this charter the legislature had implicitly resigned any claim to control the college as a state or public corporation. It had given its approval to a previously existing board to govern and administer an incorporated college. In the eyes of the legislature this college was neither a provincial, public institution nor a church school or seminary. It was a self-perpetuating society intended to provide a liberal arts education to academically qualified young men, independent of either church or state, subject only to the general superintending power of the courts over all corporations.

In subsequent years the trustees' legal commitment to the aims of a liberal arts education and to avoidance of religious discrimination and indoctrination came to be at odds with their desire to enlarge the college's function as a training ground for future presbyterian ministers. As in the colonial colleges the presidents of Hampden-Sydney since the days of Samuel Stanhope Smith had given private instruction in divinity to students preparing for the ministry. But in 1808 this theological instruction became part of the college curriculum, and for part of the student body the college took on the character of a theological seminary. The Hanover presbytery and the trustees had agreed that the presbytery, whenever in a position to do so, would fund instruction in divinity and also recommend a qualified instructor. The trustees, however, would retain veto power over his appointment. From then on until 1820 this instructor was, in fact, the college president. In 1812 the Virginia Synod officially selected Hampden-Sydney as temporary location for its seminary and sought incorporation for it. The legislature, however, refused this request in 1816. In 1820 the trustees then acted on their own initiative to separate college and seminary. They decreed that any denomination willing to fund a theological chair at the college would be permitted to nominate a candidate to the trustees for their consideration. Should there develop disagreements between the sponsoring agency and the trustees, the funds would revert to the sponsor until a candidate was found acceptable to both parties. The board insisted that the professor of theology was not to be considered a regular member of the college faculty unless he happened to be the college president. Students should not be required to attend the professor's lectures before they had earned their bachelor's degree. As only the Hanover presbytery provided funds for the position the professorship was in fact the nucleus for a theological seminary. In 1823 the presbytery officially established the Union Theological Seminary at Hampden-Sydney. For roughly a decade, the, the College of Hampden-Sydney steered an uneasy course between remaining a liberal arts college, in law committed to an independent, non-denominational board originally of mixed presbyterian and Anglican membership, yet in fact associated by personal ties with the presbyterian clergy of Virginia, and slowly taking on the functions of a presbyterian theological seminary. By 1820 no one could claim that the college was a state or public institution. But it was easier to say what it was not than what it was. Its nature was ambiguous at best.

The history of Virginia's other presbyterian academy demonstrates similar developments with, however, several significant variations. This school had been supported by Scotch-Irish immigrants in tne Great Valley to prepare its students for entry into the College of New Jersey. It had been sponsored in 1774 by the Hanover presbytery and in May of 1776 was reorganized as Liberty Hall Academy. As Howerd Miller has pointed out, its location in a heavily presbyterian area exempted it from the need to seek a "broad bottom" as had been necessary at Hampden-Sydney where the Presbyterians constituted a minority in the neighboring population. Liberty Hall Academy was governed by a board of twenty-four trustees consisting of the rector, four ministers and nineteen laymen, all Presbyterians. The right to visit and to appoint rector and assistants was given to the presbytery. Yet the trustees retained a generous measure of independence from the church body, leading the staunchly partisan historian of the Kentucky presbyterian churches to murmur that the appointment of the rector "appears to have been the last act of the Presbytery in reference to the institution." After the interruptions of the war years the trustees then applied in October of 1782 to the Virginia Assembly for incorporation. Seven months before the legislature was to grant a similar privilege to the school at Hampden-Sydney, it bestowed full corporate rights on the rector and trustees of Liberty Hall Academy.

The charters of both Hampden-Sydney and Liberty Hall permitted the employment of professors and the conferring of degrees, thus bestowing atrributes of a college on the two institutions. Liberty Hall conferred its first twelve baccalaureate degrees in 1785, and Hampden-Sydney bestowed eight degrees on its graduates in 1786. But the trustees of Liberty Hall had not asked for incorporation as a college, and as a result were given the somewhat anomalous status of a degree-granting academy. Its presiding officer, too, was not given the title president as at Hampden-Sydney, but was styled rector. Though both schools had become legally independent from the presbytery and continued unaltered their previously established boards, Liberty Hall had chosen to remain an academy. Perhaps the trustees preferred this status the better to protect their independence from the legislature. As an academy board they would find it easier to avoid being identified as a public institution subject to legislative direction.

That the possibility of legislative interference in and direction of the academy's affairs was no empty threat was to be shown in the nineties when Liberty Hall Academy would meet a head-on challenge to its corporate autonomy. The occasion for the affair was President Washington's surprise gift of one hundred shares of stock in the James River Company, and the trustees' decision, in grateful acknowledgement of the gift, to change the name of their seminary from Liberty Hall to Washington Academy. Soon, however, the trustees were apprized of rumors that the Virginia Assembly had become interested in the transaction. On December 21, 1796, it ordered that the academy "shall be erected into a college" of four schools, each one with a professor and as many tutors as necessary. Stating that one of the four professors should serve as college president, the Assembly incorporated president and professors and gave them power to appoint and remove tutors and other subordinate officers as well as to make rules and ordinances for the government of the students. The Assembly also appointed a board of self-perpetuating visitors which included the governor serving _ex officio_, but did not hold a single clergyman. The visitors were to appoint president and professors, remove or suspend them for good cause, supply their own successors, and make statutes and ordinances for the college. Without bothering to consult the trustees the legislature had changed the academy into a college.

The trustees rose to a spirited defense of their academy and placed into its minutes a strongly worded protest. To them the immediate issue was their survival as an incorporated body free from government direction or threat of extinction. On January 31, 1797, they denounced the legislative act as "an unjustifiable infringement of the rights of the corporation of Liberty Hall and an instance of tyrannical imposition in the legislature." They pointed out that in their haste the legislators had not bothered to repeal or annul the old academy charter. The trustees therefore were going to continue functioning as an academy board.

At subsequent meetings they took account of the legal implications of the legislature's act. They disputed the legality of the assembly having confiscated the property of an incorporated body. They stressed that their own fate threatened the existence of any other corporation in the state, and they hinted that they had fallen victim to the machinations of "a club which without advising their constituents did clandestinely under spurious pretexts impose on the legislature without unfolding the real nature of the case." The trustees saw themselves as champions of corporate liberty and the assembly as usurpers of privilege.

In the ensuing battle between trustees and assembly the trustees were to gain the upper hand. They reclaimed successfully their status as academy and repulsed the attempt to expropriate them. In this battle they called for assistance on other corporations in the state and informed them of "the attempt made to deprive us of our charter etc. in order that they may take measures to prevent similar attempts against them." On January 19, 1798 the Assembly repealed the Act of 1796 and explicitly revived the academy charter of 1782. Known now as Washington Academy the institution was restored to its original board with all its traditional rights and powers. For another fifteen years it was to continue its existence as a degree-granting academy. When the Washington Academy trustees in 1812 finally asked the legislature on their own initiative for a change of status from academy to college the request was quickly granted. The trustees argued that they were soon to have enough professors to warrant the college title and to be able "to render more essential services to the interests of literature." The legislature did not regard the matter as of great legal or constitutional import but treated it as a simple change of name for the institution and of title for its head. The academy had become a college and its rector a president.

What was the significance of this battle between the trustees and the legislature? From the perspective of a strictly legal interpretation of the constitutional issues involved one may, with some reservations, follow James M. Hutcheson who spoke of Virginia's Dartmouth College Case. The confrontation ovar Liberty Hall repeated the legislative take-over of an incorporated educational society first demonstrated in 1779 when the revolutionary assembly of Pennsylvania expropriated the trustees of the College of Philadelphia. It foreshadowed the coup de college to come in New Hampshire in 1816 when the Republican legislature unilaterally replaced the trustees of Dartmouth College with the trustees of Dartmouth University. In all these cases the issue revolved around the right of legislative authority to override the charter privileges of a college corporation. In both the Pennsylvania and the Virginia case the legislature itself resolved the question in favor of the college without the formal intervention of a court of law. In the New Hampsure situation both state and national supreme courts were eventually involved. Chief Justice Marshall would hand down a final legal ruling again upholding the claims of the college. In Virginia, then, another step was taken to redefine a college as an independent incorporated society and to dissociate it from its ties to the state.

From the viewpoint of institutional development of educational corporations the Virginia dispute throws much light on the circumstances which permitted or invited the emergence of a new type of college in the American states. Liberty Hall and Hampden-Sydney stand at the head of what later generations have come to call the American independent or private colleges. They were no longer provincial institutions tied to state and established church as public colleges enjoying a monopoly over collegiate services to colony or state. Like Queens College in New Jersey they had broken the monopoly of a provincial college as the sole degree-granting institution in their state . Unlike Queens College and like the College of Philadelphia, Liberty Hall and Hampden-Sydney had not been founded as colleges but as academies

Though Liberty Hall had in 1782 been incorporated as a degree-granting academy, this privilege was not commonly conceded to academies. Academies did not normally confer degrees and thus avoided from the start any suggestion that they, like a college, might or could be considered as a provinical or public institution. They usually were under the government of independent external board of trustees which rarely included public officials as ex officio members. The 1798 withdrawal of the expropriation of Liberty Hall's trustees thus amounted to an acknowledgement by the legislature of the academy's independent origin and existence. The legislature thereby conceded that not all degree-granting institutions had to be created by and for the state or, if independently founded, had to be incorporated as civil or public corporations. It recognized that collegiate institutions could evolve out of independent foundations and remain independent of governmental direction even after incorporation. On the Piedmont and in the Great Valley the first examples occurred of what was to become a new tradition in American higher education. Academies founded as eleemosynary corporations came to grow into colleges while retaining their legal status as independent eleemosynary or private corporations.

By 1800 the roots of our dual system of public and private colleges had taken firm hold in Virginia. That the rivalry of institutions involved a clash of perceptions of what constituted a college was clearly perceived by contemporaries becomes apparent when one compare the terms of the 1796 and 1782 charters of Washington College and Liberty Hall Academy. While the document of 1782 was a simple trusteeship arrangement, the act of 1796 was modelled on the charter of the College of William and Mary. It incorporated the faculty of Washington Academy and appointed a board of visitors which included Virginia's governor ex officio. Thus government by external trustees was replaced by academic self-government under the oversight of visitors as representatives of the public. As at William and Mary the Washington College professors, not a group of trustees, were to constitute the corporation. But unlike the original corporation of William and Mary, the Washington College corporation could not appoint or elect their own successors. This function was taken over by the Board of Visitors. In adopting so much of the William and Mary pattern of government the Assembly had deliberately redefined Liberty Hall Academy as a public college, denied its independence from the state, and challenged the influence exercised by its presbyterian board. Previous commentators have seen the act as primarily an expropriation of the Presbyterians and instigated by Jefferson and his friends. The statement of the trustees quoted earlier gives some credence to this belief, and its truth is closely connected to the debate between partisans of academy and college. The Presbyterians viewed Liberty Hall as an eleemosynary corporation under trustee government; the Jeffersonians looked upon it as a civil corporation under public oversight. It was a dispute that was to find its classical legal expression in the arguments and opinions presented during the Dartmouth College case. In the context of institutional developments in American higher education the legislative act of 1796 represents an unsuccessful attempt to choke off the growth of a novel kind of institution: Academies having come into existence without legislative sponsorship and public direction and being transformed into degree-granting colleges while being permitted at the same time to continue a form of government designed previously for charitable societies under the oversight of independent trustees. The act of 1798 only confirmed that this new type of institution was here to stay, and that the older provincial colleges would have to accept its competition on equal terms.

Of all the states in the new union Maryland demonstrates the greatest variety of ways in which independent institutions of higher education appeared and began to overshadow in number and significance the older public colleges. Seven new collegiate institutions made their appearance in the four decades after 1780 and competed for students with the older public colleges at Chestertown and Annapolis. One of them -- Cokesbury College -- did not survive the period, and a second -- The Medical College of Maryland -- was merged into the new University of Maryland. None of the seven could be described as a state or public institution under legislative sponsorship or supervision. Two of them were founded by Methodists, two by Catholics, one by a civic association, and two owed their origin to professional proprietors. In none of these were public officials _ex officio_ members of the incorporated board. When classified by their form of government, the seven institutions fall into three categories. Cokesbury, Georgetown, and St. Mary's colleges had first been founded as academies or preparatory schools, or -- in the case of St. Mary's -- as a theological seminary. Like Liberty Hall and Hampden-Sydney in Virginia they were incorporated as colleges independent of the state and under the direction of a previously existing board of governors or trustees. Asbury and Baltimore colleges had no direct academic predecessors but were founded de novo as colleges. The legislature did not prescribe or add to their proposed charters or boards. It incorporated their associated founders as independent college trustees. In the case of the College of Medicine and of the University a yet different form of governance was chosen. As in the medieval universities the faculty members of the institutions were incorporated as independent proprietors. An external board of governors or trustees was absent altogether. In the four decades straddling the opning of the new century Maryland's remarkable fecundity of institutional innovation permits us to sample, as it were, within the boundaries the varied types of academic institutions that were to characterize the nineteenth century.

In being opened originally as an academy Cokesbury repeated in Maryland the pattern already observed in Virginia. Destined not to survive the eighteenth century Cokesbury had been founded as a school for children above the age of seven by a conference of methodist ministers in Baltimore at Christmas 1784. Five methodist ministers and ten laymen were to serve as board of trustees. Classes began for the children in June of 1785 and for students of a preparatory school in

March of 1787. Support from Methodists, however, proved to be quite insufficient and uncertain. Some of the trustees therefore argued that incorporation as a college might gain them financial support from the state of Maryland. They persuaded the board to apply for incorpoation. On December 26, 1794, the academy trustees then were reconstituted as The Trustees and Governors of Cokesbury College in the State of Maryland. The charter specified that the president of the college should not have to be a member of any particular denomination or sect and empowered the trustees to grant academic degrees. The Methodists had now exchanged full control over the institution for the hope of state aid. Many church members had objected to this bargain as they thought the hope to be illusory. In this they were only too correct. State funds did not materialize and the trustees were forced to suspend their collegiate department within a few months and to confine instruction to the English school. Disaster struck in December of 1795 when the building went up in flames. Undaunted, the trustees moved to a new location in Baltimore. Again fire struck in December of 1796. Continued attempts at revival proved unsuccessful, and in 1799 the legislature gave permission to dispose of the college property. Cokesbury College, the first methodist collegiate institution, had disappeared from the scene without ever having bestowed a degree on any of its graduates.

Where the Methodists had failed, the Catholics eventually succeeded. In 1815 Congress incorporated their academy in Georgetown as a college. It may well be that both failure and success derived from the same source: The inability and unwillingness of the people in Maryland to support collegiate foundations. Suspicions of an educated elite ran deep, and Samuel Knox's 1797 plea for "proper subordinate" preparatory schools found a hospitable reception. Bishop Carroll shrewdly perceived these sentiments as well as the precarious position of Catholics in a largely Protestant country. Though from the beginning of his ministry in America he intended to found a college "which might at the same time be a seminary for future clergymen," he knew that in Maryland an academy was more acceptable than a college. An academy would avoid the stigma of aristocratic pretension and, not requiring state authorization for the conferring of degrees, it could remain under the exclusive control of the church. A college, on the other hand, not being under complete church direction, could expect a wider base of support than a seminary. The creation of a strictly religious school, Carroll thought, was not the most politic enterprise to undertake in the United States: "Being admitted to equal toleration, must we not concur in public measures, and avoid separating ourselves from the community? Shall we not otherwise be marked as forming distinct views and raise a dislike which may terminate in consequences very disagreeable to us?" The result of these considerations was that in 1791 Carroll founded an academy which, like a college, admitted students of all Christian denominations and allowed them to attend worship services at their own churches. Intellectual training and moral discipline were its announced aims.

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The eventual incorporation by Congress of Georgetown as a college did not change the schools'governmental structure. Though Bishop Carroll had agreed with the academy's directors that students should be shielded from the moral temptations which lay in wait for them were they to attend the colleges in Philadelphia, Chestertown, or Annapolis, he felt that all too often moral discipline was bought at the expense of academic quality. For years, he complained, the administrators ran Georgetown "on the principles and in the system of a convent ... Their principles are too monastic; and with a laudable view of excluding immorality, they deny that liberty which all here will lay claim to." What Carroll hoped the college would achieve was a combination of intellectual strength and recognition with moral discipline of its students and faculty. The federal charter of March 1, 1915, allowed for this combination. It made no mention of governance at all, and thus left unchanged the existing structures. It held no provision prohibiting discrimination on religious grounds against trustees, faculty members, or students. It simply gave degree-granting powers to "the President and Directors of the College of Georgetown." At Georgetown the final step had thus been taken to permit an academy to assume the rights and privileges of a college without asking the institution to acknowledge in any explicit manner its obligations to public authority.

St. Mary's in Baltimore was the third college to grow out of a previously existing institution. It had originally been opened in October of 1791 as a seminary for the training of Catholic clergymen and eight years later had been enlarged with the addition of a college preparatory academy. In 1791 it consisted of a group of three Sulpician priests and five students newly arrived from France. Their problem, as Bishop Carroll has warned them,was the scarcity or non-availability of sufficiently prepared students. The absence of Catholic preparatory schools in the United States and the anti-clerical outbursts of the Revolution in France had prevented young Americans from obtaining preparatory training either at home or abroad. As a result the Sulpician seminary was without students from 1795 to 1797. Not even Bishop Carroll's Georgetown Academy could provide enough candidates,and matters were made worse when in 1800 the directors of Georgetown added a philosophy course to their curriculum and thus competed directly with the Sulpicians' program. Intent upon creating employment for their members the Sulpicians agreed in 1799 to open a preparatory academy on seminary grounds. Here Father Du Bourg taught Cuban and French boys the elements of a classical education until in 1803 the Spanish government recalled the Cubans to Havana. To compensate for this loss Father Du Bourg opened St. Mary's Academy to American students. This decision had several momentous implications: It brought to the school students who had no intention of entering upon the priesthood; it opened the school to Protestants as well as Catholics, and it paved the way for the incorporation of the academy as a college on January 19, 1805.

The Maryland legislature authorized Father William Du Bourg and the associated professors of St. Mary's Seminary to admit students to degrees "in any of the faculties, arts and sciences, and liberal professions". It specified that students could not be subjected to religious tests, but excluded those from this provision who were admitted to special certificates testifying to the completion of a partial course. The charter thus recognized a distinction between the college on the one hand and academy and seminary on the other. In the next year the Sulpicians officially adopted college, academy, and seminary as their own. There were plans under foot in 1807 to incorporate a projected College of Medicine of Maryland into St. Mary's College and Seminary and thus to raise the Sulpician institution to the rank of a university. The legislature, however, refuse to endorse the project. Seminary and college nonetheless fared well, the former now deriving support and candidates from the latter. In 1808 Bishop Carroll acknowledged that Father Du Bourg had raised the college "to high estimation, notwithstanding the education there is enormously expensive." Nevertheless Carroll believed that its effect would be beneficial. Five years later he was less charitable. The Sulpccians, he complained, had formed "a college for promiscuous and ornamental education" and thereby accumulated "an enormous debt which has almost ruined both college and seminary." At many other occasions, though, Carroll generously acknowledged his debt to the Sulpicians. Besides St. Mary's academy, college, and seminary they had also given him a minor seminary at Emmitsburg. That institution opened its doors as a school for boys in 1808 and, in 1831, was to be chartered as Mount St. Mary's College. St. Mary's College in Baltimore became a flourishing institution. In 1822 it received a papal charter permitting the bestowal of degrees in divinity. For many decades it was to serve Catholics and non-Catholics alike as a well reputed college.

The difficulties encountered by Asbury College and Baltimore College derived in part at least from their being incorporated at the outset as independent colleges which had not lived through a period of trial as an academy. Both institutions were placed under the direction of boards of external trustees. Asbury College in Baltimore was chartered in 1818 as a successor to Cokesbury College. Sponsored by Maryland Methodists it was to be conducted "for the benefit of youth of every religious denomination" who were to be admitted freely and without discrimination to all programs and honors of the college. Like Cokesbury, Asbury College suffered from lacking resources and support. It closed its doors sometime in the eighteen-thirties or forties. More successful than the methodist sponsors of Asbury was an interdenominational group of clergymen and laymen. In January of 1804 they received a charter of incorporation for Baltimore College. This school, too, was to provide a liberal education "for the benefit of youth of every religious denomination ...without requiring or enforcing any religious or civil test, or urging their attendance upon any particular plan of religious worship or service, other than that they have been educated in ..." The thirty-seven trustees elected Bishop John

Carroll as their chairman and proceeded to assemble a faculty again without regard to religious preference or allegiance. Their charter empowered them to admit the students to the degrees normally given in American colleges and universities. The college president was to serve as trustee _ex officio_. Little is known of the history of Baltimore College. It is reported to have been in operation intermittently until 1825, but apparently it never bestowed degrees on any of its graduates. For all practical purposes it functioned as an academy until in 1830 it was merged into the University of Maryland. Absence of secure foundations as academy or preparatory school and lack of funds or continuing commitment on the part of the sponsors account for the more or less speedy demise of these two colleges.

The third type of collegiate foundation in Maryland was introduced by the state's medical practitioners. Three circumstances converged to make their enterprise successful: These men stood in need of professional instruction and training; as a group they had the resources to found on their own the requisite institutions that would satisfy that need; and, particularly fortuitous, their novel instructional venture could be made to become financially self-sustaining or even profitable. Of significance from an historical point of view is the fact that in relying on the resources of their own profession the doctors had no need for the customary form of trusteeship governance. They resorted instead to the medieval pattern of incorporation of a group of professional practitioners. Keeping the training of their successors in their own hands, they were able to regulate admission to their ranks and to uphold standards of performance. Baltimore doctors had been concerned with competition from quacks and had sought to provide professional training and certification as early as the 1780s. In 1798 they obtained the first legislative endorsement of their endeavours. One hundred and one medical practitioners of various counties were incorporated as the Medical Chirurgical Faculty of the State of Maryland. Their object was, so it read in the bill's preamble, to promote and disseminate medical and chirurgical knowledge that citizens might in the future be prevented "from risking their lives in the hands of ignorant practitioners or pretenders to the healing art." For that purpose the Faculty was empowered to establish a Medical Board of Examiners to grant licenses to candidates for the profession, who could pass an examination or show a diploma "from some respectable college." Regulation and licensing were intimately related to education and training. The doctors'action underscored that connection.

Ten years later the members of the examining board and other physicians formed the first proprietary professional school in Maryland. They associated with one another as president and professors of a medical school and were incorporated as The College of Medicine of Maryland. They attempted to connect themselves with St. Mary's College in order to give the new school a collegiate affiliation and prestige. But for reasons not now known, the legislature refused this move. Instead the College of Medicine was to remain in close union with the Medical and Chirurgical Faculty. Its members were to be patrons and visitors; its president was to serve as the college chancellor. As befitted an educational institution of professional character, there were to be no religious or civil tests for its students. The choice of the college's presidents, professors, or lecturers was to be made without regard for religious preference. The college opened promptly in 1807 and graduated its first medical doctors in 1810. Maryland now had established a self-governing proprietary professional school through which the medical profession had taken into its hands and held under its autonomous control the preparation and licensing of the state's medical practitioners. The College of Medicine of Maryland, together with the almost simultaneously established College of Physicians and Surgeons of New York City, represented a new type of institution for higher education. It was a proprietary professional college established independently of and from any existing collegiate foundation.

Their early expectations to the contrary the doctors did not find their enterprise financially profitable. They therefore sought to transform their medical school into a university. The legislature had come to their aid in authorizing lotteries in 1808 and 1811, but the results were meager. Seeking relief from their financial burden president and professors asked the legislators in 1812 to broaden the base of their institution. Added prestige and larger enrollments drawn from the presence of an undergraduate body were expected to improve the Medical School's position. The legislators quickly complied, and with the act of December 29, 1812, authorized the Medical College "to constititute, appoint and annex to itself the other three colleges or faculties, viz: The Faculty of Divinity, the Faculty of Law, and the Faculty of Arts and Sciences." These four faculties together were then to constitute the University of Maryland. The charter included the familiar prohibitions against religious and civil tests and discrimination. It incorporated the members of all four faculties and the provost as the Regents. Each faculty was given power to appoint its own professors and lecturers and to appoint its own dean. The legislature constituted the original faculties on a thoroughly professional plan. They confirmed the professors of the College of Medicine as the Faculty of Physic; the Faculty of Divinity was to consist of a professor and six ordained ministers; the Faculty of Law similarly of one professor and six qualified members of the bar, and the professors of arts and sciences were to be joined by the principals of any three academies or colleges in the state. The regents were given the power to grant degrees, and whatever in the act was thought to be inconsistent with the 1807 charter of the College of Medicine was declared to be null and void. A new University of Maryland had thus been born.

The second University of Maryland was a remarkable institution. Despite its name it was not a state university. It was quite different in genesis and organization from its earlier namesake. It was a private corporation of professionals associated together around the pre-existing corporation of the College of Medicine of Mayland. In its simplicity of conception and operation it harked back to the _studia generalia_ of the Middle Ages. Its members intended to govern themselves collectively and, in the areas defined by the charter, separately within their four faculties. The university differed from its sister institutions in the United States in not having an external board of governors and in not being accountable to either such board or the state government. As it was free of state supervision, it also made no claims for state support. It expected to be autonomous and self-sustaining as a proprietary business. As a matter of practical experience it soon became evident that one source of difficulties was the prior existence of the Medical College and its dominant position in the university. Though the 1812 charter appeared to have terminated the oversight and patronage of Maryland's Medical and Chirurgical Faculty over the Medical College, members of the state medical examining board still served on the college faculty. The subsequent history of the university made it evident that the new faculties were mere appendages to the Medical College. Before the twenties began the College of Arts and Sciences managed to offer no nore than a few desultory lecture series, and the divinity professors preached occasional sermons. Instruction in law did not begin until 1823. For all practical purposes the College of Medicine was the university.

Maryland thus presents a paradigm case for the development of higher education in the decades after the Revolution. From an initial enthusiasm for public colleges and a public university the people of the state backed off quite early and eventually repudiated their first state university. The persistent theme of public agitation had been the aristocratic and elitist nature of college and university education which benefitted the state's wealthy citizens at the expense of taxpayers of all ranks and conditions. Despite the populist rhetoric of the anti-college groups, however, the counter-proposals had little to do with education for the common man in local elementary schools. Instead, after 1806 the appropriations for the university colleges were channeled to the support of preparatory academies in the counties. These institutions were not by any means viewed or financed as a concern of the people. Rather they were seen as means of permitting the "middling classes" to challenge the hold of a native aristocracy on professional positions in public and private life. The same motivation guided the efforts of various groups to conduct collegiate ventures. We find it in evidence among the Methodists at Cokesbury and Ashbury colleges, among the multi-denominational founders of Baltimore College, and among Baltimore's Sulpician Fathers and Maryland's physicians. As their medical college evolved into the second University of Maryland it did not thereby become a state institution as its earlier namesake had been. It remained a proprietary business enterprise beholden neither to the state nor to the people of Maryland. By 1820 college and university education in Maryland thus was in the hands of incorporated trustees or regents-proprietors. Only the two early eighteenth century survivors, Washington

College and St. John's College, received any state support. Even that came on a scale quite reduced when compared to the earlier commitments. Other than granting these two appropriations and authorizing lotteries for the support of colleges and universities the state did nothing to aid Maryland's institutions of preparatory and collegiate education. Higher education had been left to the initiatives and direction of private trustees and proprietary interests.

Soon after 1780 Americans ceased to take it as axiomatic that a provincial college or state university could claim a monopoly on higher education in any of the new states. Chief Justice Marshall, bitterly opposed by Jefferson and the Republicans from New England to Virginia, would confirm in his opinion in the Dartmouth College case that an era in the history of American higher education had come to an end. No longer were the institutions of higher education by definition and as a matter of tradition clothed with public authority or placed under public direction or supervision. In the decades between 1780 and 1820 the American independent or private college had come of age.